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LEET JURISDICTION IN ENGLAND

Especially as Illustrated by the Records
of the Court of Southampton



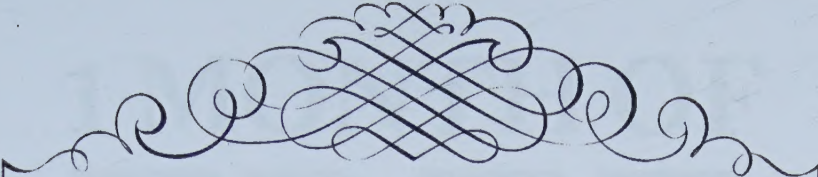
by
J. J. C. Hearnshaw

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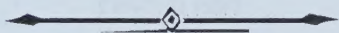


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PUBLICATIONS OF THE
SOUTHAMPTON RECORD SOCIETY.

No. 5

Leet Jurisdiction in England

ESPECIALLY AS ILLUSTRATED BY

THE RECORDS OF

The Court Leet of Southampton,

BY

F. J. C. HEARNshaw, M.A., LL.M.,

Professor of History in the Hartley University College, Southampton,

Fellow of the Royal Historical Society,

Late Scholar of St. Peter's College, Cambridge.

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20.7.51

SOUTHAMPTON:
COX & SHARLAND,
150, High Street.

1908.

MOTTO.

"To the student of manorial rolls by far the most franchise is the 'court leet or view of frankpledge,' 1 very common, because it has great importance in the society, because its origin is extremely obscure: so we may be rash in speaking about it; still a little ventured."

F. W. MAITLAN

(Select Pleas



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no. 5

PREFACE.

—:O:—

This essay has assumed much larger proportions than were originally intended. I set out with the purpose of writing a mere explanatory commentary upon the *Southampton Court Leet Records*, and especially on those portions of them which have already been put into print.¹ But, as I got together my materials, so many difficult problems of more than local significance presented themselves for solution that I was forced to extend my enquiries, first, into the large, but ordered, realms of legal theory, and, secondly, into wide and encumbered regions of hitherto unexplored historic fact. I found that it was impossible to treat the court leet of Southampton as an isolated phenomenon, and that, in order properly to interpret the local evidence, it was imperatively necessary to make some investigation of the whole system of leet jurisdiction in England. Hence, as I pursued my studies, my point of view insensibly changed, and when at length I settled myself down to classify my notes and to write my thesis, I found myself dealing not with the "Court Leet of Southampton" as my single theme, but with "Leet Jurisdiction in England, especially as illustrated by the Records of the Court Leet of Southampton." The second is, of course, a much larger topic than the first, and it has drawn me into writing a much more bulky volume than I originally contemplated; but I trust that my readers will pardon me for laying so unexpectedly heavy a burden on their attention, and will believe that in no other way would it have been possible adequately to deal even with the local court and its mysteries.

Various references scattered over the following pages will make it evident that the writing of this essay has occupied several months. As a matter of fact, the greater part of it was

¹ *Southampton Court Leet Records*, transcribed and edited by F. J. C. Hearnshaw and D. M. Hearnshaw, Vol. I., in three parts, viz.: Part I., 1550-1577; Part II., 1578-1602; Part III., 1603-1624. (Cox & Sharland, 1905-7.) A second volume, also in three parts, comprising the records of the period 1625 to the date of issue, is in the initial stages of preparation at the hands of Rev. W. E. Ashdown, B.A., Miss E. R. Aubrey, M.A., and Miss M. G. Sims, M.A.

put into its present form during the autumn and winter of 1907 and the spring of the current year. Considerations both of time and type made it necessary to print off the earlier sheets before the later ones were so much as planned out. Hence the essay as a whole has not had the advantage of that single final revision which is so desirable in the interests of unity and consistency. I mention this particularly, because in one or two respects I am conscious that my opinions have undergone development during the progress of my work. By far the most important matter in regard to which I am aware of some modification of view concerns the nature of the modern court leet. When I wrote the earlier pages of the essay I had not realised quite so fully as when I wrote the historical summary at the end, what I now believe to be the truth, that in modern times, as well as in the middle ages, the "court leet" as a separate and distinct court existed, in its pure form, nowhere save in legal theory—i.e., that, as it was originally, *so it always remained*, a fiction of the lawyers' imagination. The larger the number of records I have consulted, the stronger has become my conviction that the so-called "courts leet" of England and Wales are really relics of old-time undifferentiated courts (*curiæ generales*) of hundred, franchise, manor, or borough, which in mediæval days, by way of addition to other powers, enjoyed the privilege of exercising leet jurisdiction, and which in the modern period acquired the never-quite-accurate designation of "courts leet," owing partly to the superior dignity of their leet functions, partly to the decline of their other functions, and partly to the influence of legal theory.

Another conviction which has, spite of myself, forced itself upon me as my essay has progressed, is that the sheriff's tourn did *not* originate in the *Assize of Clarendon*, 1166. I say this with the utmost trepidation, because, as constitutional historians well know, it means the abandonment of a position occupied by Professor Maitland (*Select Pleas*, p. xxxi). No one who is acquainted with the extraordinary brilliance of Professor Maitland's work, with the almost infallible sureness of his judgment, and with the well-justified confidence with which later scholars have taken his generalisations as the firm basis of their own further researches, will underestimate the gravity of this surrender. I will not re-discuss the question here. I allude to it, indeed, only that I may prepare the reader for a certain (I hope, under the circumstances, pardonable) hesitancy in the

treatment of the *Assize of Clarendon* in the opening chapters of the essay. Briefly stated, the position which I have ultimately felt bound to take is that the *Assize of Clarendon* marks, not an increase, but a diminution of the sheriff's power, and that the only important innovation introduced into the hundred by the *Assize* was the jury system, intended to be a check upon the frankpledge system. I think that in respect to the relation of the jurors to the capital pledges I have been able to say something which is new. I can only hope that in the opinion of competent judges it may be regarded as true.

It is impossible to mention Professor Maitland without on the one hand expressly recognising the incalculable debt which all students of mediæval institutions owe to him, and without on the other hand deploring the unhappy fate which not only hampered his labours while he lived, but which took him from their midst while he was yet in the maturity of his powers. It is not too much to say that the present essay could not have been written at all if it had not been for the pioneer work done by Professor Maitland, in part by himself alone, and in part in conjunction with Sir Frederick Pollock, Mr. W. P. Baildon, and other scholars. Professor Maitland showed a very kindly interest in my study of leet jurisdiction when I began it, and I had hoped to have the inestimable benefit of his advice as I went forward. But, alas, it was not to be. On April 23rd, 1905, he wrote me: "I am just back from Madeira Your questions I understand and will keep in mind. Hereafter I may perchance be able to say a word or two about them, but for some weeks to come I must try in vain to make up lost time." That was the last I heard.

Another matter of regret I must also here note. Dr. Paul Vinogradoff's book on *English Society in the Eleventh Century* (with its fifty-page section on mediæval jurisdiction in county, hundred, and franchise) came out when all but the last few pages of my essay were in print. Hence I have not been able to make any use of the results of Dr. Vinogradoff's researches, which, indeed, at present remain unknown to me.

One other word of explanation, and then—except for a few expressions of personal thanks—I shall have done. I would ask that both those who go to this essay for information, and those who feel disposed to criticise it, will remember the conditions under which it has been written. It has been written, of necessity, in a provincial town, where the library facilities,

though unusually good of their kind and most generously placed at the writer's disposal, are of course not those of the metropolis or of a university. Further, it has been written in the brief intervals of leisure which alone the multifarious duties of a teacher in a growing University College leave. The great bulk of it, in fact, has had to be penned in periods stolen from sleep before the breakfast hour of crowded days. Hence, I fear, my work cannot be expected to attain to the high standard which might be looked for in a record of researches conducted under more favourable conditions of time and place.

In conclusion, I have the pleasant duty of thanking the numerous friends who have given me valuable assistance. I am extremely grateful to the many correspondents—town clerks, stewards, and antiquarians—who have very kindly answered my enquiries concerning local leets. To Mr. and Mrs. Sidney Webb I am particularly indebted; for they very generously allowed me last autumn to see in proof some important chapters of their authoritative book on *English Local Government: the Manor and the Borough*, which has only this month been published: the numerous references that I have made to these chapters by no means indicate the largeness of my obligation. Finally, I have to thank my friend Mr. G. Glover Alexander, of Downing College, Cambridge, Barrister-at-Law, for generously undertaking to read through my proofs. I have felt much relieved to know that his practical experience of the law courts has been throughout checking and supplementing my merely theoretical acquaintance with them.

F. J. C. HEARNshaw.

Hartley University College,
Southampton,
March, 1908.

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Leet Jurisdiction in England.

INTRODUCTION.

I.

Such curious persons as, moved by antiquarian zeal, make their way to the Audit House—the Municipal Buildings—of the Borough of Southampton on the morning of the third Tuesday after Easter in any year, are able to assist at a legal ceremony which forms a vital, though attenuated, link between the present age and the earliest period of the borough's constitutional history. For on that day is held, according to the ancient custom of the town, the "law court of our lord the king," now commonly known as the court leet. The following is the manner of its holding.

About a week before the date of the session, a general notice is posted at the entrance of the Audit House, calling upon "all persons that do owe suit and service" at the court leet, together with "all jurymen and others"—the "others" being left conveniently undefined—"to attend to do and perform what to their several offices do appertain and belong."¹ At the same time an individual summons is sent to forty or fifty more or less prominent residents of the borough, selected by the sheriff in consultation with the town clerk,² requiring each of them "to do and perform the several duties of a jurymen" at the court.

When the day arrives, at eleven in the morning, there gather in the council chamber of the Audit House such of the jurors as have felt disposed to attend, drawn thither—in what ratio who shall say?—by the spell of antiquity and by the prospect of champagne.³

¹ For full text of this and the other documents referred to in the Introduction, see Appendix I.

² Mr. R. R. Linthorne, the present town clerk and steward of the court leet, writes:—"The court leet jury is now selected by the sheriff, the foreman. It is the practice of the town clerk to send the sheriff, for the time being, a list of the members selected for the previous year, and the sheriff makes such alterations and additions to it as he thinks fit." It is to be noted, however, that every modern list is headed by the following six officials in order:—the mayor, the sheriff, the under-sheriff, the ex-mayor, the senior-bailiff, the junior-bailiff.

³ Table of Jurors for recent years:—

1901	summoned	32	attended	24	1905	summoned	46	attended	31
1902	"	32	"	18	1906	"	50	"	33
1903	"	38	"	21	1907	"	50	"	35
1904	"	42	"	30					

The opening of the proceedings is indicated by the usher of the court, one of the town sergeants, who reads the following proclamation: "All manner of persons that do owe suit and service to this court leet and law day now to be holden in and for the town and county of the town of Southampton draw near and give your attendance and answer your names." Then the steward of the court, the town clerk, stands up and, holding a roll in his hand, cries: "You good men that are returned to inquire for our sovereign lord the king, answer to your names." As the roll is being called there is invariably an appeal, invariably received with laughter, that those jurors who have disobeyed their summons shall be fined, but, of course, no fine is at the present day ever imposed. The jury is then sworn—first, the foreman, who is now-a-days always the sheriff of the county borough, afterwards the remainder *en bloc*. One and all they have to declare that they will "enquire and true presentment make" of all such things as shall be given them in charge; that they will "the king's council," their own and their fellows' well and truly keep; that they will "present nothing out of hatred and malice," nor "conceal anything out of love, fear or affection," but will in all things "well and truly present." This form concluded, the court takes as read a lengthy list of "free-suitors," who, as the heirs of old-time burgage-tenants of certain lands and tenements in the town are supposed to be under special obligation to be present.

After passing over this spectral list of unknown and, for the most part, non-existent people, the steward calls upon the jurors to listen to the charge: "All you that are sworn draw near and hear your charge." The voice of the steward as he reads it seems to come from a far distant age. The jurors, as the antique exhortations and commands fall upon their ears, are made to realise that they have been withdrawn to a great distance from the world of modern business and affairs; while those of them to whom the history of the court is familiar, can imagine that in this word or in that they catch the masterful tone of some Tudor monarch, perceive the constitutional subtleties of some Lancastrian lawyer, feel the impress of the organising genius of some remote Plantagenet, or trace the half obliterated influence of the wills of yet earlier rulers of the race.

In the charge, at the outset, dominant stress is laid upon a classification of the cases coming within the cognisance of the court, which those jurists who drew up the charge evidently

regarded as of fundamental importance. It runs: "What you that are sworn as to this court leet are now by your solemn declaration¹ obliged to inquire upon I shall reduce to these two heads, and they are either of such things as are here only inquirable and presentable, or else of such things as are not only presentable, but punishable also in this court." Under the first head, as "inquirable and presentable only," are grouped those greater and more serious crimes which from the time of the Anglo-Saxon kings, in a steadily increasing number, have been claimed as "pleas of the crown," and accordingly removed from the jurisdiction of the old communal authorities of manor, borough, hundred, and shire. The offences specifically mentioned under this head in the charge are "petty treasons, felonies by common law, felonies by statute law, together with their accessories." The jurors are told that if any such cases are brought to their notice they must certify them "unto some superior court where the offenders are to be presented and punished according to law." Then follows a much more detailed enumeration of those offences over which the court is declared to have full jurisdiction—powers both of presentment and of punishment. The list, however, for all its length, is suggestive only, rather than exhaustive. No exhaustive list could, in fact, have been drawn up; for, as we shall see later on, no statute or ordinance ever *positively* defined the functions of courts with leet jurisdiction. Their spheres of influence, originally as various as vague and vast, based largely on immemorial custom, were only gradually and imperfectly delimited *negatively* by theorising lawyers, by encroaching rival courts, by upstart local authorities, and by unfriendly kings. It was possible for those who compiled the charge to the jurors to state specifically what cases had been removed from the jurisdiction of leet courts. But it was not possible for them to make any precise positive statement of the functions still remaining; for they were dealing with courts whose origin was even then lost in the mists of antiquity, but which were certainly older than their name of "leet," older than the offices of those who presided over them, older than the system of presentment by jurors which had become their chief characteristic, older even than the customs and enactments which they enforced. Hence all that the charge can say is: "The offences that are both presentable and punishable in this court

¹ The words "solemn declaration" have been substituted for the word "oath," presumably since the passing of the Oaths Act in 1888 (51-52 Vict. cap. 46).

are *such as these*"; and again, after the enumeration of types has been concluded, "and you shall inquire of all other matters," by the steward omitted, "that are here in this court leet inquirable and presentable as fully and effectually as if the same had been particularly named to you." The typical articles of enquiry mentioned in the charge are, in brief summary, as follows:— (1) How the constable and tythingman have discharged their duties; (2) whether in each tything a pair of stocks is kept in good repair, "for it is the tythingman's prison and a thing very useful as the world now goes"; (3) if any impounded cattle have been illegally seized; (4) how far unlawful games such as carding, dicing, and skittle playing have been indulged in; (5) what evil persons—common barrators, scolds, brawlers, raisers of quarrels, busybodies, idle vagabonds who sleep by day and rob henroosts by night—haunt the neighbourhood; (6) whether any poaching takes place—killing of pheasants or partridges in the night time, tracing of hares in the snow, snaring of pigeons; (7) whether the victuallers sell wholesome victuals at the prices fixed by authority; (8) "if any labourers or artificers have combined together" to raise wages or shirk work; (9) how far false weights and measures are used by tradesmen; (10) whether any forestalling, ingrossing, or regratting takes place; (11) how the highways, hedges, and ditches are kept; and finally (12) what nuisances of any kind exist, for "if any foot-path to church, mill, or market be denied that hath been an ancient and accustomed way, or if any house, wall, hedge, or ditch be set up or made in the king's highway, or any water-course stopped or turned thereinto, or any carrion, dung, or other offensive thing be laid in or near it, or any other nuisance whatsoever to the annoyance of the king's subjects, it is here punishable." The steward's exhortation concluded, the jurors are reminded that they have, further, to grant discharge to various officers who have fulfilled their year of service, and to appoint successors to them.¹ With that they are left to face those duties the faithful performance of which has been so solemnly urged upon them.

These duties cannot, at the present day, be called onerous. As a rule they consist merely in listening to the enumeration of the

¹ The form of discharging and appointing officers was continued till 1904, when for some unexplained reason it was, to the regret of antiquarians, allowed to lapse. In 1904 the officials installed were: (1) A High Constable who, to prevent clashing with the modern police organisation, was the head of the force; (2) Sixteen Beadles, one or two for each of nine wards, who were all policemen; (3) Seven Surveyors and Drivers of the Common, who were chosen from among the paid park-keepers; (4) Four Discreets of the Market; and (5) the Alderman of Portwood.

bounds of the borough as they are read out by the steward. Occasionally, however, a presentment is informally made, or rather (to state the case more exactly) a grievance is alluded to—as for example, this year (1907), the obstruction of a path by the erection of the new electric light works of the corporation. When this happens, it is safe to say that the presentment is made not in any expectation that the court itself will take action, but either because there are present the mayor, the sheriff, and other prominent borough officials who, with newer, larger, and more definite powers than those conferred upon them by the leet, can deal with the matter in question; or because reporters are in the court who, through the press, will give a desired and useful publicity to the subject of the presentment.

The whole business of the court, from start to finish, occupies about half-an-hour—unless, as has happened once or twice lately, some juror present prolongs the ceremony by seizing the occasion to give an antiquarian address on the ancient glories of the court.

Finally, the usher formally dismisses the court by crying: "All manner of persons that have farther to do at this court leet may from hence depart, and make their appearance when summoned."¹ At this bidding, and without any noticeable delay, the jurors leave the court and pass into the adjoining mayor's parlour, where the sheriff entertains them with champagne and other delights.

Such is the court leet of Southampton at the present day. It is obviously a mere shadow of its former self; an attenuated figure, weak, and decrepit with incalculable age. But it is no mere ghost, incorporeally haunting the scenes of its former activity. It has never died. It has not lost all its old-time powers, such as they were, and there is no telling what strange and startling things it might be able to do if, stirred to sudden vigour, it should strike at some enemy of the commonwealth and challenge the modern rulers of the community to repudiate its immemorial authority.

¹ This form of dismissal appears to be an awkward abbreviation of "All manner of persons that have appeared here this day at this court and have further to doe here let them now come in and they shall be heard else every one may now depart," etc.—Sheppard *Court Keepers' Guide*, 4th Ed. p. 65.

II.

The court leet of Southampton does not stand alone. Enquiry reveals the fact that here and there, up and down the country, similar courts have been allowed to survive—in some cases merely as antiquarian relics, in others as holders of real though limited rights of local government. It has been, however, no easy matter to obtain information concerning these scattered survivals. On the one hand they are extremely inconspicuous, so that often only chance, or good fortune, or enquiry in some quarter difficult of access, brings their existence to light.¹ On the other hand, they are sometimes far from easy to identify, their character being obscured either by ambiguity of name or by peculiarity of function. For example, the “Mickleton Jury” of Nottingham, is in reality a court leet; while, on the contrary, the so-called “court leet” of Bewdley “seems always to have been confined to the transference of property,” and if so, has been and is no court leet at all. I can, therefore, feel no confidence that I have been able to make an accurate list of all the courts which still continue to exercise or to claim some shreds of leet jurisdiction in England. I have, however, by search, by happy accident, and by the kindness of correspondents,² come to know of some four dozen, and under the circumstances I am disposed to be thankful rather than to repine.³

¹ Nearly fifty per cent. of my letters of enquiry—which numbered some three hundred in all—although accompanied by stamped envelope for reply, remained unanswered.

² I must specially mention Mr. Sidney Webb, Mr. A. L. Hardy (Deputy Registrar of the Manorial Society), and the Editor of *Notes and Queries*, together with the contributors to that valuable magazine.

³ The following is the list. Some notes on each place mentioned will be found in the second part of this essay:—

Ashburton (Devon)	Hungerford (Berks.)	Nottingham (Notts.)
Ashton-under-Lyne (Lanc.)	Kilcott (Glouces.)	Penton (Hants)
Bewdley (Worcester)	Knareborough (York.)	Penwortham (Lanc.)
Bideford (Devon)	Knole (Somerset)	Savoy (Westminster, M'sex.)
Bradford (York.)	Launceston (Corn.)	Sheffield (York.)
Bridgetown (Devon)	Leeds (York.)	Somerton (Somerset)
Chatteris (Camb.)	Leeds Kirkgate-cum-Holbeck	Southwark (Surrey)
Cirencester (Glouces.)	(York.)	Stakesby (Whitby, York.)
Crickhowell and Tretower	Leyland (Lanc.)	Sutton (Ely, Camb.)
(Brecknock)	Lichfield (Staff.)	Taunton (Somerset)
Dinas Mawddwy (Merioneth)	Litton (Prestelgn, Radnor)	Tweedmouth and Splittle
Fyling (York.)	Llantrisant (Glam.)	(Berwick-on-Tweed)
Glamorganshire Manors of the	Longton (Lanc.)	Uppingham (Rutland)
Marquis of Bute	Maple Durham (Petersfield,	Warwick (War.)
Godmanchester (Hunt.)	Hants)	Whitby (York.)
Greenham (Berks.)	Newport (Pom.)	Wotton Foreign (Glouces.)
Halton (Cheshire)		

I shall be exceedingly grateful to any of my readers who can help me to supplement this list.

But whether the still-existent courts leet number four dozen or forty dozen, they are the mere straggling remnant of a great host that at one time filled all the land. For even so late as the seventeenth century—at any rate in legal theory—every man lay within the jurisdiction of some leet,¹ and, in fact as well as in theory, the whole area of England and Wales was parcelled out into the spheres of operation of leet courts of various kinds. Moreover, the powers of these courts, though even then they were past their prime, were incomparably greater than the powers possessed by any surviving leet court at the present day. Those, therefore, who wish to study leet jurisdiction in England are compelled to take a longer view than that which embraces merely existing institutions, and a wider view than can be supplied by the records of any one court. The present is wholly unintelligible apart from the past; moreover, the records of any single court, such as the court leet of Southampton, however far back they extend, lose half their significance and meaning unless they are read in the light of the general principles of legal theory, and amid the reflections cast by the practice of other courts of the same system. When this longer and wider view is taken, the prospect is found to be not without its obscurities and uncertainties. Difficulties analogous to those which perplex the searcher for present survivals of leet jurisdiction, trouble the student of that same jurisdiction in its more spacious days. For on the one hand, courts undoubtedly possessed of leet powers are found under strange and diverse names; as, for example, the “halmotes” of Durham, the “portmote” of Liverpool, the “portmanmote” of Leicester, the “wardmotes” of the city of London, the “barmote” of the wapentake of Wirksworth, the “freehold court” of the wapentake of Ewcross, the “great court” of the barony of Alnwick, the “court” of the hundred and honour of Berkeley, the “lawday” of the hundred of Wellesbourne, the “sembly quest” of Sheffield, the “tourn of the abbot” of the liberty of Whitby Strand, the “visus franciplegii” of countless manors, and the “visus de borchtruning” of one.² On the other hand, courts called “courts leet”—among which the court leet of Southampton is by no means the least conspicuous—are found in the possession and exercise of powers

¹ Sheppard *Court Keepers' Guide*, 4th Ed. (1656): “For every man must be within some leet, and no prescription will exempt a man from it. If therefore a man be under no particular leet, he shall be under the sheriff's turne,” (p. 7.)

² For “visus de borchtruning” cf. Vinogradoff *Villainage in England*, p. 363, where reference is made to Br. Mus., Add. MSS. 6159, f. 54a.

widely different from those described as proper to courts leet in charges to juries, guides for stewards, and treatises on the laws of England. The whole question of leet jurisdiction, in short, is one of much complexity, and one which merits the careful attention of constitutional historians. In the ensuing essay I propose to consider some of its leading features. In the first part, I shall examine the court leet of legal theory, and depict the ideal standard of leet jurisdiction set up by the lawyers; in the second part, I shall turn from theory to practice, and shall summarise the results of my enquiries into the actual working of leet jurisdiction in Southampton and other places; in the third and last part, I shall bring together my conclusions in a rapid survey of the history of leet jurisdiction in England, in so far as I have been able to trace the course of its rise, maturity, and decline.



PART I.

The Leet in Legal Theory.

SECTION I.—THE AUTHORITIES.

SECTION II.—LEET JURISDICTION IN THE MEDLÆVAL
AUTHORITIES.

SECTION III.—THE COURT LEET IN THE MODERN
AUTHORITIES.

Section I.—The Authorities.

CHAPTER I.—PRELIMINARY OBSERVATIONS CONCERNING “LEET,” “VIEW OF FRANKPLEDGE,” AND “SHERIFF’S TOURN.”

§1.—The Term “Leet.”

One of the first things to arrest the attention of the student who seeks to discover the position of the leet in legal theory is the fact that, though the elements of leet jurisdiction can be traced back to a great antiquity, the terms “leet,” as applied to a court, and “court leet,” are of comparatively modern origin. To the writers of the seventeenth century they were familiar enough; not only are they of constant occurrence in the legal treatises of the period, they are also referred to in the general literature of the age in a manner which indicates that they were household words.¹ But as we pursue our backward course through the writings of the preceding century, their appearances become increasingly rare, until when we pass beyond the Tudor period and search the records of the middle ages, we find them to be little more than East Anglian dialect-expressions. Thus, for example, the seventeenth century “court leet” of Southampton was the sixteenth century “lawday”;² the seventeenth century “court leet” or “great leet” of Sheffield was the sixteenth century “sembly quest”³; the sixteenth century

¹ Cf. Shakespeare, *Taming of the Shrew*, Intro. Scene II. The First Servant says to the bemused Christopher Sly:—

“For though you lay here in this goodly chamber,
Yet would you say ye were beaten out of door,
And rail upon the hostess of the house,
And say you would present her at the leet,
Because she brought stone jugs and no seal’d quarts.”

² The first instance in the records of the application of the term “court leet” to the Southampton court occurs in the 84th presentment of the roll of 1596.

³ *Leader Records of the Burgery of Sheffield*, p. 19, etc., etc.

"court leet" of Manchester was the unparticularised mediæval "court of Manchester"¹; and many other instances could be given. Similarly, the legal treatises or court keepers' guides, which in the late Tudor and early Stuart periods were commonly called by such titles as "The Manner of Keeping a Court Leet," were, until 1542 or thereabouts, invariably described by some notably different name, as for example, "*Modus tenendi Curiam cum Visu Franciplegii*."² Whence then came this late-obtruding term "court leet," and what was its meaning?

Its history, so far as it has been ascertained, can be soon told. The first known instances of the occurrence of the word "leet" are to be found in documents of William I.'s reign. *Domesday Book*, for example, has two East Anglian entries which run respectively "Hundredum de Grenehou de xiv. letis," and "Hund. et dim. de Clakelosa de x. leitis." In each of these cases the "letes" are geographical divisions of the hundred, and each "lete" is assessed to almost exactly the same amount of geld, viz. 1/8.³

The next leading example of the use of the word comes from a date precisely one century later. In Abbot Sampson's survey of the lands of the Abbey of Bury Saint Edmunds—a survey made about the year 1185—the term is still employed in a strictly geographical sense: "In hundredo de Tinghowe sunt xx. ville ex quibus constituuntur ix. lete quas sic distinguimus; Barne et Flameton et Lacford sunt una leta," etc., etc.⁴ The twenty townships of the hundred were grouped into nine leets. Why were they so grouped? We may suspect that, as in 1085, it was primarily for purposes of assessment. But with assessment commonly went some sort of jurisdiction. There may have been a court of the leet, *curia letæ*, though none is named. At any rate the geographical aspect of the leets is the prominent one.⁵

A leap of exactly another century brings us to the *Hundred Rolls* and the *Plecita quo Warranto* of Edward I., and from these clearly emerges for the first time the leet as more than a geographical area, viz., as a right or collection of rights of jurisdiction—privileged and lucrative jurisdiction—within that

¹ Tait *Mediæval Manchester*, p. 83.

² See bibliographical list in Chapter III. below.

³ Round *Feudal England*, p. 101. Cf. also Spelman's *Glossary* s. v. *Leet*, and Ritson's *Court Leet*, p. v.

⁴ Gage *History of Suffolk*, p. xii.

⁵ The same is true of the much later examples to be found in Dugdale's *Warwickshire*, p. 2. A taxation roll of 8 Edward III. (1335), there quoted, gives assessments for the "leta de Brinklow," which comprised forty-three towns and villages, the "leta de Merton," which comprised thirty-eight, and so on.

area. But still the term is found, as in the records of 1085¹ and 1185, only in connection with East Anglian entries. It is, for example, the prior of Cokeford in Norfolk who claims "habere letam in Rudham"—a place also in Norfolk. In other parts of England the fellows of the prior of Cokeford claim similar rights by means of less condensed forms of expression: they claim to have "visum franciplegii, assisam panis et cervisiæ, waivam," etc., etc., in long enumeration. From this same period, moreover, and from the same region, comes the classic example of early leet jurisdiction in England, viz., the leet rolls of the city of Norwich for the years 1288 onwards.² These reveal to us the city divided into four geographical leets—corresponding to the fifteenth century civic "wards"—and show us, further, in each of these a leet court taking the view of frankpledge, holding the assizes of bread and ale, examining weights and measures, and exercising a dozen other minor franchises.³ It would appear then that, at the end of the thirteenth century, and in East Anglia, to possess a "leet" was to have a court which, in addition to its inherent communal or feudal rights (whatever they were), had within a defined geographical area and at specified times, certain other rights of petty criminal jurisdiction and police control, which rights were of the nature of special privileges, and among which the view of frankpledge was the chief. By way of confirmation we may note that this second and derived jurisdictional sense of the word leet is clearly dominant in an almost contemporary roll of another Norfolk court, viz., the court of Great Cressingham, 1328, which is entitled "*Curia et Leta de Cressingham Magna*."⁴ It is equally clearly dominant in the title of a court keepers' guide, printed by J. Skot, just two centuries later (c. 1529): "*Modus observandi Curiam cum Leta*." How easily a geographical expression acquired a jurisdictional connotation will be readily understood by those who, in their study of the general constitutional history of England, have observed how the terms "county" and "hundred" and "wapentake" were

¹ It should be noted, however, that Spelman in his *Glossary* says: "Sed occurrit vox in Charta Willielmi Conq. de fundatione Abbatie de Bello." I have not been able to verify this reference to the Charters of Battle Abbey.

² Hudson *Leet Jurisdiction in Norwich*, and also Vol. I. of *Records of the City of Norwich*.

³ See also, for an account of a similar four-leet division of Yarmouth in 1379, with similar jurisdiction, Merewether and Stephens *History of Boroughs*, pp. 764-69.

⁴ *Five Court Rolls of Great Cressingham*, edited by H. W. Chandler. The second court roll (1329) is similarly headed. The third (1489) gives "*curia cum leta*." The last (1684) has the variant "*leta cum curia general*."

each of them used with bewildering ambiguity to describe a tract of territory and the court which administered its affairs.

Now it happened that at the precise moment when the clerks were penning those *Hundred Rolls* and *Placita quo Warranto*, in which we first evidently discern the word *leet* used in the sense of a collection of rights of jurisdiction, the king was busily engaged—by means, indeed, of these very *Hundred Rolls* and *Placita*—in making a sharp legal distinction between those communal and feudal rights which local courts possessed inherently, and the special rights of holding view of frankpledge, taking the assizes of bread and ale, assaying weights and measures, etc., etc., which he asserted were all due to royal grant. What term was there in use which described and included the long list of petty privileges which were in question? There was none. The only course open to the scribe or the lawyer was either to enumerate the rights *seriatim*, or else, as was commonly done, to take the most important one, “*visus franciplegii*,” and make it carry by implication the undefined remainder. Hence “*curia cum visu franciplegii*” came to be understood to be a court possessed of not only the right to hold the view of frankpledge, but also the other rights commonly associated with it. This large and miscellaneous group of minor franchises was, however (it is suggested), known by lawyers to be closely similar to that group of rights of jurisdiction exercised and enjoyed in the East Anglian leets by the courts of the leets. It could be described concisely as “*leet jurisdiction*.” Hence, it would appear, in the late thirteenth and early fourteenth centuries the East Anglian term “*leet*” spread over the whole country, and established itself in legal phraseology as a convenient brief epitome of that series of petty (though profitable) rights of jurisdiction which the king and his lawyers claimed as *regalia*, but which they allowed to remain in the hands of privileged local authorities.

This nationalisation of the term “*leet*” was signalised by its first appearance in a statute in the year 1353. The *Statute of the Staples* (27 Ed. III., Stat. 2, cap. 28) enacts new regulations for the sale of wool. It enacts them regardless of the inconvenience and injury caused thereby to existing mercantile interests, but “*salvant en autres choses as prelates ducs counts barouns et autres seignurs lour feires marches et hundredes wapentakes letes jurisdictions courtes frauncheses et toutz autres choses as eux regardantz es lieux ou lestaples sount et serrount et aillours auxi*

avaunt come ils les avount devaunt les estaplez ordeinez." It is notable that in this document letes are mentioned in intimate association with hundreds and wapentakes, both of which are geographical expressions that had acquired a jurisdictional connotation. Another statutory appearance of the word in the following century is even more notable. It occurs in "an Act for annulling of Letters Patents made to Searchers and Surveyors of Victuals" passed in 1473 (12 Ed. IV., cap. 8). The preamble, in which the word is to be found, remarks that the majority of important cities, boroughs and towns in the kingdom have "courtz des letez et vieux de frank plegge annuelment tenuz deinz mesmes les citeis burghs et villes." Here again in the phrase "courts of leets" we can discern the eminent idea of jurisdiction superimposed upon a geographical base. For some two-and-a-half centuries—roughly from 1300 to 1550—this second sense of the term leet, viz., a collection of minor franchises supposed to be dependent upon royal grant, seems to have been the dominant one.

It was not, however, destined to be the final sense. Where statesmen and administrators were content to distinguish jurisdiction, lawyers tried to distinguish courts. Where the former saw a single tribunal exercising various functions, the latter professed to see separate tribunals; and one of these was the "court leet." Hence the third and last meaning of the word, which, as I have already noted, was dominant in the sixteenth and later centuries. Leet jurisdiction was embodied, became corporate, and assumed the guise of legal individuality, in the shape of "a leet," in the form of a court, the "court leet," which differed from the leet court—*curia letæ*, *curia et leta*, or *curia cum leta*—of the earlier period, in that it was confined strictly to the functions to which the term "leet jurisdiction" had been applied. It is our prime business in this part of the essay to see what those functions were.

Before leaving the term "leet" I must, however, say a word or two concerning its etymology. It has been the subject of wild conjecture and much research. Coke and Dugdale in the seventeenth century, the one with forensic boldness, the other with scholarly diffidence, derive it from the Anglo-Saxon *gelathian* or *gelethian*, meaning "to assemble" or "to summon."¹ Nelson in his *Lex Maneriorum* says "'Tis called leet from the Saxon word *laet* which signifies "censura," "arbitrium," because the

¹ Coke, 4th Inst., p. 261; Dugdale *Warwickshire*, p. 2.

court redressed wrongs by way of judgment against any person of the frankpledge who had done wrong or injury to another.¹ Ritson mentions, without committing himself to, a suggested derivation from the Anglo-Saxon *leod*, "the people," whence court leet would stand for "populi curia or folkmote."² Scriven prefers the Anglo-Saxon *led*, meaning "to grant or assign," and thinks that its derivative "leet" was adopted because the court was held by the subject under a grant from the crown. Finally, a heroic steward of the Manchester court leet in 1788 ventured to say that the word could be traced to "the Saxon word *lite*, "parvus," "little," and hence that court leet meant "a little court"!³ All these are wild conjectures. But though modern scientific philologists agree in rejecting such pseudo-etymologies, they are by no means agreed as to what *was* the origin of the word. Two theories at present contest the field. Dr. Skeat thinks that in one way or another *leet* may be traced to the Anglo-Saxon *lætan* (German *lassen*), our modern English "to let" (till the fourteenth century pronounced "to leet"), which had as one of its meanings "to cause to be done." Hence, he suggests, *leet* may have connoted "appointed."⁴ This, however, totally fails to explain, or even to recognise, the primary geographical connotation of the term: indeed, one gathers that this had not become known to Dr. Skeat when he wrote his note in 1889. Dr. Henry Bradley, on the other hand, writing in 1907 and taking this all-important fact into account, connects *leet* with the Anglo-Saxon *laeth*, which we have in the *lathes* of Kent, and he adds that *laeth* seems to have meant "landed property."⁵ Mr. Round, accepting this view (which is much more convenient to historians than Dr. Skeat's), points out the analogy between the English word and the Danish *laegd*, which is defined (by Dr. Skeat himself, by the way) as "a division of the country for military conscription." One feels the force of Mr. Round's contention that it cannot be without significance that it was in the region of the English *Dane law* that the term *leet* was first used as the name of a territorial unit of geld-assessment, while in Denmark the term *laegd* was used as the name of a territorial

¹ Nelson *Lex. Man.*, p. 131.

² Wharton *Law Lexicon*, s. v. *Court Leet*. Cf. also Gneist: "Das Wort *leta*, *leet*, entspricht dabel dem Begriff, volksgerecht, *folkmete*." *Das heutige englische Verfassungsrecht*, p. 168.

³ *Manchester Court Leet Records*, Vol. IX, p. 240.

⁴ See note in Matland's *Select Pleas in Manorial Courts*, pp. lxxiii.—lxxvi. Cf. also an interesting correspondence in *Notes and Queries*, 6th Series, Vols. vii. and viii.

⁵ See note in Miss M. Dormer Harris's *Coventry Leet Book*, p. x. Cf. also the *Oxford English Dictionary*, s. v. *Leet*.

unit of military obligation.”¹ The transference from one language to another might explain the puzzling transformation of form. There I must leave the matter.

§2.—View of Frankpledge.

It has already been remarked that the very heart and centre of leet jurisdiction was the right to hold the view of frankpledge.² This, however, is not the place in which to treat of the knotty problem of the frankpledge system.³ Suffice it to say that in Norman and Angevin times all men of the lower orders were required to place themselves in groups, usually of ten or twelve, and that the members of each group, under the general control of a tythingman or chief-pledge, were mutually responsible for one another's good behaviour. To keep this system in working order, that is to see that youths as they attained the age of twelve were duly enrolled, and to receive a report from the tythingmen concerning the behaviour of the men under their police supervision, the sheriff of the county, from Henry II.'s time, if not before, twice a year went on tour through the hundreds within his jurisdiction, and held a specially full meeting of the hundred court, at which he took the “view of frankpledge.”⁴ This six-monthly assembly, or “great hundred court,” acquired the name of the “sheriff's tourn.” In this tourn, or great hundred court, the sheriff, moreover, not only saw that the tythings were complete and that the king's peace was being kept, he also made enquiries concerning many other matters in which the king was interested, but which were not big enough to demand the attention of the itinerant justices of the *curia regis*. The tourn, in short, became a kind of general petty assize for the hundred, valuable for police purposes, and a considerable source of royal revenue.

There were, however, even in Norman times, and still more in later days, many hundreds in which the sheriff had no jurisdiction; they had passed, as honours, liberties, or franchises, into the hands of private lords—bishops, abbots, earls, barons—and were administered for private

¹ Round *Feudal England*, p. 101.

² Cf. Vinogradoff *Villainage in England*, pp. 362-3: “The foundation of the court [leet] was laid by the frankpledge system and the necessity of keeping it in working order.”

³ For the frankpledge system cf. Stubbs *Constitutional History*, Vol. I., pp. 91-6; Pollock and Maitland *Hist. of Eng. Law*, Book II., Chap. III. § 4; Holdsworth *Hist. of Eng. Law*, Vol. I., pp. 8-9.

⁴ *Assisa de Clarenduna*, §§ 1 and 9, with which compare *Leg. Hen. I. cap. 8*, in Stubbs *Select Charters*, pp. 108-6 and 142-4.

gain.¹ The stewards of the lords of these honours, liberties, or franchises claimed a jurisdiction co-ordinate with that of the sheriff in his tourn. Further, even within the hundreds in which the sheriff held his tourn there were manorial lords who, on the strength of ancient grants, or by prescription, or in the mere insolence of strength, asserted the exemption of themselves and their tenants from suit to the hundred court; and there were, once again, rising boroughs whose burgesses, disliking the sheriff's rule and the burden of attendance, and coveting the profits of his jurisdiction, secured from the king charters freeing them from attendance at the tourn.² Thus all over the country there were, besides the sheriffs' tourns, countless and most various courts of honours, liberties, franchises, manors, and boroughs holding the view of frankpledge and all that appertained to the view.³ This "view of frankpledge and all that appertained to the view" was precisely what was connoted by the term "leet" in its jurisdictional sense. Hence, to have a *curia cum leta* was, on the one hand, to have exemption from attendance at the sheriff's tourn, and, on the other hand, to have a court co-ordinate with the sheriff's tourn, exercising the same jurisdiction, and drawing the same profits in fees and fines, but applying them to the benefit of the lord and not to the augmentation of the revenues of the king.

§3.—Tourn and Leet in Legal Theory.

Now originally the sheriff's tourn and a *curia cum leta* would not necessarily have anything in common save the one right to hold the view of frankpledge with its appurtenances—and as we shall shortly see these appurtenances varied from time to time and place to place very widely. The sheriff's tourn, on the one side, had in addition to its "leet" and other criminal jurisdiction, all the business of a hundred court to transact, while the *curia cum leta*, on the other side, had to administer the varied general affairs of the honour, liberty, franchise, manor, or borough to which it was attached. But two processes tended to reduce the two sets of courts to one and the same level. On the one hand, the ordinary hundred court jurisdiction died out or sank into

¹ Thus in William I.'s day seven of the twelve Worcestershire hundreds were in private hands.

² The City of Norwich seems to have obtained this privilege in 1194. See Hudson *Leet Jurisdiction in Norwich*, p. lxxii. Very many charters of exemption were secured from Richard I. and John.

³ Sometimes of course they held much higher powers of justice as well, but with these we are not concerned. For the whole question see Pollock and Maitland *Hist. Eng. Law*, Book II., Chap. iii., § 8, on *Seignorial Jurisdiction*.

complete insignificance, while, at the same time, the sheriff was deprived of his larger criminal powers, so that the "leet" jurisdiction of the sheriff's tourn was left standing isolated and conspicuous. On the other hand, from the time of Edward I. the "leet" jurisdiction of the private courts was, in legal theory, separated with increasing sharpness from the communal or feudal jurisdiction which they possessed of inherent right.¹ So that when the Tudor and Stuart lawyers, carrying the Edwardian distinction a step further, erected by the aid of their imaginations out of this leet jurisdiction a clearly defined and individual "court leet," lo! the "court leet" of their fancy stood forth in the image of the decrepit sheriff's tourn and they cried, Behold, father and child!

It is above all things necessary to a proper understanding of the position of the court leet in legal theory that this alleged family relationship of the court leet to the sheriff's tourn should be realised. For legal theory was based almost entirely on this fanciful filiation. For the supposed connection was so generally taken for granted by lawyers, and indeed by judges and legislators, that "articles of the tourn" were regarded as necessarily also "articles of the leet." Institutions, such as the presentment jury, established for the one were without question employed in the other; and statutory restrictions which seemed to apply solely to the reputed parent were unhesitatingly extended to the supposititious offspring. The following quotations and references, chosen from the very large number available, will, I think, be sufficient to make the nature of the legal fiction clear.

(a)—AS TO ORIGIN.

Coke expresses the general opinion when he says of the court leet: "This is a court of record and at the first derived and taken out of the tourn."² Viner states the same view more at large in the words: "Of ancient time the sheriff had two great courts, viz., the tourne and the county court; afterwards for the ease of the people, and especially for the husbandmen, that each of them might the better follow their business in their several degrees, this court here spoken of, viz., view of frankpledge or leet, was by the King divided and derived from the tourn."³

¹ And at the same time the higher franchises, such as the right to try and punish felons, were taken away from such private courts as had them.

² *Coke 4th Inst.*, p. 261.

³ *Viner Abridgment*, s. v. *Court Leet*. Cf. *Kellway's Cases (A.D. 1604)* ff 66-67: "A le commencement toute leetes deins Engleterre fuer. derives hors del torne del vicount per graunte des royes."

(b)—AS TO SPHERE.

Since it was held that every man was "under the precinct" of some leet, but that no man owed suit to more than one, it followed, on the one hand, that if a man were "under no particular (*i.e.* private) leet" he was looked upon as subject to the sheriff's tourn;¹ but, on the other hand, that "after the grant of a derivative leet" the sheriff in his tourn had no longer any authority to "meddle within the reach" of the new court unless and except—and this exception kept alive the legal theory of the origin of the courts leet—the derivative leet neglected its duties and failed to make due presentments of offenders, or were lost through forfeiture or escheat, in which cases the sheriff's tourn reasserted again its original authority, stepped in once more, and dealt with the matter.²

(c)—AS TO POWERS.

The leet, however, though looked upon as derived from the tourn, was regarded as co-ordinate with it, and of equal powers. "The tourn and the leet," says Coke, "be also of one and the same jurisdiction; for *derivativa potestas est ejusdem jurisdictionis cum primitiva*"; and, again, "The tourn and the leet have but one style and the same jurisdiction."³ In similar strain Kitchin remarks: "turn and leet are all one,"⁴ while Bacon calls the tourn "the grand leet,"⁵ and Nelson "the king's leet."⁶ Hales, Blackstone, and later legal commentators express the same view in almost identical terms.⁷

¹ Sheppard *Court Keepers' Guide*, p. 7.

² Cf. Scroggs *The Practice of Courts Leet*, p. 2. It was, however, the general opinion that a special writ was necessary to warrant this intrusion. Thus Coke says:—"If a common nuisance, etc., done within the jurisdiction of the leet be not presented in the leet, the sheriff in his tourn cannot enquire of it: for that which is within the precinct of the leet is exempt from the tourn, otherwise there might be a double charge; but in that case a writ may be directed to the sheriff to enquire thereof." *4th Institute*, Ch. LIV.

³ Coke *2nd Institute*, on Mag. Cart., § 35.

⁴ Kitchin *Jurisdictions*, p. 46.

⁵ Bacon *Answers*, p. 750.

⁶ Nelson *Lex Man.*, p. 138.

⁷ Hales *Pleas of the Crown*, p. 175; Blackstone *Commentaries*, Book IV., Ch. 19. Cf. also Pollock and Matland, *Hist. Eng. Law*, Vol. I, pp. 532 and 580; McKechnie *Magna Carta*, pp. 96—97; and Gneist *Das heutige englische Verfassungsrecht*, pp. 166—70:—"Auch der *private leet* ist indessen Ausfluss der königlichen Gerichtsgewalt, ein *court of record*, der im Namen des Königs die Einfassungen zur königlichen Gerichtsfolge anbietet; es ist nur eine Abzweigung des *sheriff's tourn*, also mit analoger Gerichtsbarkheit über Vergehen, die nach gemeinem Recht und nach dem alten Buss-system geahndet worden: nicht über *placita coronæ*, bei denen wie im *sheriff's tourn* nur zu inquiriren ist." Gneist has a brief paragraph to the same effect in *Das Englische Verwaltungsrecht*, p. 740.

(d)—AS TO APPARENT DIFFERENCES.

It is true that from time to time ingenious jurists sought to find recondite differences between the two courts—points by which the son could be distinguished from the father. Thus it was maintained on the alleged authority of Magna Carta that the tourn must meet at a certain fixed place, but that the leet might be called to any spot within the precinct; and again, that the time of the holding of the tourn was determined and unalterable,—viz., within a month after Easter and a month after Michaelmas—but that royal grant or prescription might settle the date of the meeting of the leet.¹ Some writers² claimed statutory authority³ for saying that “the leet hath conusance of bread and ale, that is of the assize of bread and ale, and the tourn hath not conusance thereof,” and also that the leet, but not the tourn, has “authority *de presenter ceux queux ne sont lies*,” i.e., to enforce the oath of allegiance. But Coke, who notes these subtleties with some impatience, sweeps them all aside, attributing them to “want of the knowledge of antiquity,” treating them as efforts to raise unimportant divergences to the position of essential differences, and stating emphatically his opinion that, in spite of over-acute text-writers and under-educated statute-makers, the two courts “have but one style and the same jurisdiction.”⁴ It may be noted, however, that Coke himself—for he did not love these ancient desystematising private courts—did something to establish a more serious distinction between leet and tourn. For he denied—and apparently he was the first definitely to do so—that the leet had power to imprison.⁵ Coke’s view prevailed, and hence it was possible for a later writer to say: “the steward [of a court leet] cannot at this day [1656] commit to prison any man for his contempt, nor can he now take a recognizance or bind any man to the good behaviour, as heretofore he might have done, and as the sheriffe in his turne may doe.”⁶

If, however, here and there, under the nibbling of the lawyers, the jurisdictions and powers of the two courts ceased exactly to coincide at their edges, the fundamental fact remains clearly evident that in legal theory these jurisdictions were looked upon

¹ Sheppard *Court Keepers' Guide*, pp. 5-6. The allusion is to *Magna Carta*, § 35.

² Cf. references in Coke *2nd Inst.* on *Magna Carta*, § 35.

³ Apparently 18 Henry VI., cap. 14.

⁴ Coke, *loc. cit.*

⁵ Ritson *The Jurisdiction of the Court Leet*, p. xvii.

⁶ Sheppard *The Court Keepers' Guide*, p. 9.

as revolving round a common central axis and as possessed of the same radius. This coincidence of sphere, obscured in their popular Anglicised names, comes out distinctly in their more formal Latin styles: the court leet of a manor was "Curia visus franci plegii tenta apud B. coram A. B. senescallo"; the sheriff's tourn was "Curia visus franci plegii domini regis apud B. coram vicecomite in turno suo."¹ The original central axis in each case was the duty of holding the "view of frankpledge," to which had become annexed the duty, or rather the lucrative privilege, of enquiring into and punishing a wide circle of minor offences. Thus, in legal theory, as has already been remarked, the sheriff's tourn was looked upon as the king's court, doing the king's work, held by the king's representative, to the profit of the king; while the manorial or municipal leet was equally regarded as the king's court, doing the king's work, but as, either by royal grant or by prescription, held by some local authority—manorial lord or municipal corporation—to the profit of the same.²

CHAPTER II.—STATUTES AND REPORTS.

§1.—Introductory.

When a student begins in a systematic way to seek for authoritative information concerning any English judicial or administrative institution, he naturally turns first of all to the statutes of the realm to see what enactments have formally regulated it, and to the cases decided in the supreme courts to find out what judge-made law has informally moulded it. As he does so in the matter of the leet, he at once realises the importance of a clear understanding of the facts that the "court leet" of the sixteenth and subsequent centuries was merely the embodied and individualised "leet jurisdiction" of the later

¹ *Maitland Select Pleas*, p. xxix.

² For cases bearing upon and illustrating the relation of leet to tourn, see the *Year Books* (e.g. 1366, 1408, 1439, and 1494): *Loader v. Samuel*, 1890; *Tottershall's case*, 1632.

middle-ages; and that the "leet jurisdiction" of the later middle-ages was merely a collection of minor *regalia* which could be appendant equally well to a hundred court, or a portmote, or a wardmote, or a manorial court, or any other local court; which could, indeed, be dissociated from a court altogether¹ and be attached to a messuage,² and perhaps even held as a personal servitude, if, as Ritson says, "a man may have a leet in the lands of another."³ Anyone who did not realise these facts would find himself hopelessly bewildered by his early authorities, even if he did not fail to see in them authorities at all. For the older statutes relating to the leet deal with functions, not with an institution, and the more ancient cases treat of rights of jurisdiction rather than claims to the possession of a court; while in neither statutes nor cases does the term "leet" ever occur. Moreover, even the more modern acts of parliament which *do* specifically mention the court leet, and the more recent cases where the possession of a specialised judicial institution *has been* in question, are but half intelligible to those who are unacquainted with the process of the evolution of the court and its functions.

§2.—Statutes.

(a)—THE "STATUTUM WALLIE."

It is a strange and notable fact that at once the most ancient and most authoritative statement of the "articles of the view," that is, the first statutory definition of what was afterwards to develop into "leet jurisdiction,"—so peculiarly English in its character as it was—is contained, not in any document either originating in or applying to England, but in Edward I.'s famous *Statute of Wales*, enacted at Rhuddlan in 1284. Edward I. had in that year completed his conquest of the principality of Llewelyn, had divided it for administrative purposes into two portions, North (Anglesey, Carnarvon and Merioneth) and South (Cardigan and Carmarthen), and to each had resolved to apply the English shire and hundred system of government. Hence for the information of the alien and subjugated race, and for the guidance of his officials, it became necessary for him to define with careful minuteness and precision the details of the organisa-

¹ Cf. cases of *Norris v. Barret* and *Lawson v. Hare*.

² Cf. case of *Gittens v. Cowper*.

³ Ritson *Jurisdiction of the Court Leet*, p. 2.

tion which was to supersede the ancient tribal polity. Among the institutions introduced, and in the *Statutum Wallie* described at length, was the sheriff's tourn—although, it is important to note, it was a tourn shorn of its most prominent function, viz., the duty of taking the view of frankpledge—a veritable Hamlet without the Prince of Denmark! Thus it came to pass that a jurisdiction which in England had been grafted upon an old communal court, viz., the hundred court, by a long process of, for the most part unrecorded, royal husbandry, was not only boldly transported and transplanted, but was also, during the process, accurately depicted and described as an aid to its naturalisation in the new soil. So, as Bishop Stubbs says: “The *Statute of Wales* not only shows a determination closely to assimilate that country [Wales] to England in its institutions but furnishes an admirable view of the local administration to which it is intended to adapt it.”¹ It gives us a picture of a jurisdiction of the leet type appendant to the court of the hundred.

(b)—THE PSEUDO-“STATUTUM DE VISU FRANCIPLLEGII.”

In speaking of the *Statute of Wales* as “the most authoritative statement of the articles of the view,” I have already in anticipation accepted the judgment passed on its only rival, the so-called *Statutum de Visu Franciplegii*, by the Records Commissioners of 1810.² The document in question is entitled in earlier and less critical editions of the statutes of the realm “A Statute for View of Frankpledge made the Eighteenth Year of King Edward II., Anno Dom. 1325.” Its statutory character, however, was always in doubt. There is an instance of its denial so early as 1483³; while even writers who quote it without formal expression of scepticism evidently regard it as merely declaratory. Thus Kitchin begins his list of “charges which can be dealt with in the court leet by the common law” with an enumeration of eight groups of offences mentioned in this statute.⁴ Powell, further, expressly says: “The first statute law that directs the matters of inquirie at the leet is the act for the view of Frankpledge, made 18 Ed. II., which was but an affirmation of the common law.”⁵ This “law,” which has no preamble, or enacting clause, or any other internal mark of a statute, is in

¹ Stubbs *Const. Hist.*, Vol. III., p. 308. Cf. also Reeves *Hist. Eng. Law*, Vol. II., pp. 13-16.

² *Statutes of the Realm*, edited by A. Luders and others, 1810, etc., Vol. I., p. 216.

³ *Year Book, Mich. 28, Ed. IV.* pl. 2, f. 23.

⁴ Kitchin *Jurisdictions*, pp. 44-46.

⁵ Powell *Jurisdiction of the Ancient Courts of Leet*, 1642. Cf. also Sheppard *Court Keepers' Guide*, p. 19.

fact a mere list of the articles of the view, differing in no respect from the similar lists which were drawn up by Fleta and Britton and probably other Edwardian lawyers. But it somehow found its way, together with other doubtfully authoritative though useful documents, into the MSS. rolls of the statutes, placed, possibly for convenience of reference, between the “vetera statuta” of Edward II. and his predecessors on the one hand, and the sharply distinguished “nova statuta” of Edward III. and his successors on the other. The years 1324-7, which divide the “old” from the “new” statutes, occurred in the midst of the period when the statutory process was being fixed and parliamentary procedure determined.¹ Even at that date the line between the spheres of royal ordinances and acts of parliament was not very clearly drawn, and as to the documents of the earlier periods all was confusion and uncertainty. Frequently it could not be determined by whom they were issued, when they were drawn up, to what they applied, what they meant, which of various rival versions was the more authoritative. Under the circumstances it is not to be wondered at either that the collection of apocryphal enactments to which the *Statutum de Visu Franciplegii* belongs should have been found by the lawyers of Edward III.’s reign hard to place, or that on the other hand writers of the uncritical fifteenth and sixteenth centuries, seeing them awkwardly sandwiched in between the acts of two consecutive reigns, and ignorant of their history, should have quoted them as statutes of the closing, and otherwise unproductive, years of Edward II. Hence the elevation of the so-called *Statutum de Visu Franciplegii* to a rank and dignity to which it can lay no claim.² But though not strictly statutory, this early list of the articles of the view is none the less highly important to students of leet jurisdiction. Wholly apart from the fact that its mere position in the statute book gave it an authority, effective, even if usurped, which was powerfully instrumental in fixing the sphere of the tourns and the minor franchise courts, it has peculiar value as presenting a picture of the nascent leet jurisdiction detached from any particular court, whether courts of hundred, liberty, borough, or manor—a sort of *hereditas jacens* which lent itself peculiarly readily to later legal personification.³

¹ It was not till 1332 that the share of the Commons in legislation was assured; 1332 is the earliest date concerning which we have positive evidence that the two Houses sat separately. Cf. Stubbs *Const. Hist.*, Vol. III., p. 445.

² Maitland *Select Pleas*, p. xxviii.

³ Concerning the date of this spurious statute see note at the end of this chapter on the evidence of language.

(c)—LATER STATUTES.

Apart from the *Statutum Wallie* and the pseudo-*Statutum de Visu Franciplegii*, no document claiming to have the authority of an act of parliament attempted to lay down in broad and general outline the limits of the jurisdiction associated with the view of frankpledge. Many statutes, however, did as a matter of fact help to determine those limits. They will be discussed in detail later on. All that need be said here is that the earlier acts—those of the fourteenth and fifteenth centuries—were for the most part concerned primarily with the sheriff's tourn, and operated restrictively, taking away the larger criminal powers of the sheriff and reducing the sphere of the jurisdiction of his tourn to the narrow "leet" limits of modern times; while the later acts—those of the sixteenth and seventeenth centuries—were primarily intended to apply to the then standardised courts leet of manors and boroughs (the tourns being virtually extinct), and operated extensively, adding many new petty administrative and judicial duties to the traditional common-law obligations of the courts.¹

§3.—Reports.

Not less important than statutes as sources of information concerning the evolution of leet jurisdiction in England are the reports of cases relating to that jurisdiction brought before, argued in, and decided by the supreme courts, in particular the court of King's Bench. These reports are almost equally valuable as authorities respecting the development of the legal theory of the leet, and as fountains of knowledge concerning the actual practice of leet courts—although it is, of course, only as the former that they will be employed in this part of the essay. They show law in contact with fact; legal principles enlarging themselves to embrace new circumstances; circumstances accommodating themselves to developing legal principles. It is not too much to say that every important general rule concerning the court leet and its functions laid down in the writings of modern lawyers, from the Elizabethan Kitchin to the Victorian Stephen, has been framed and fashioned as the result of legal conflict and judicial verdict.

¹ See below Appendix II. for list of statutes relating to leet jurisdiction.

(a)—THE YEAR BOOKS.

First in order, both as to time and as to interest, come the reports contained in the *Year Books*. These books, which acquired their name because there was one for each regnal year, are written in French, and are supposed to be official records, made by servants of the crown, of important cases tried before the king's judges both at Westminster and on circuit. The extant series begins with 20 Edward I. (1292), and continues, with some breaks, to 27 Henry VIII. (1536). Thus, it will be seen, it exactly covers that important period during which leet jurisdiction was being defined and delimited, and was gradually being transmuted and materialised into the "court leet." Here, if anywhere, one would expect to find the process of the transformation revealed. But, alas! how to gain access to the revelation? True, thirteen volumes, covering as many years, excellently edited, translated, and indexed, have been published in the *Rolls Series*: these are open to students. But the remainder are for the most part locked up in the obscurity of imperfect, ill-printed, untranslated, unclassified, unindexed editions of the sixteenth and seventeenth centuries. Only a student with months of leisure could hope to wade through the marginal titles, which are his sole guide, and pick out from the thousands of cases all those which bear upon his theme. As Sir F. Pollock and Professor Maitland say: "The first and indispensable preliminary to a better legal history than we have of the later middle ages is a new, a complete, a tolerable edition of the *Year Books*. They should be our glory, for no other country has anything like them: they are our disgrace, for no other country would have so neglected them."¹

(b)—THE ABRIDGMENTS.

For most of our knowledge of the principles which emerged from the multitude of cases reported in the *Year Books* we are indebted to old legal scholars who, with infinite toil digested the cases, classified the results under titles, and published them in the form of *Abridgments*. The earliest in date of these works is *La Graunde Abridgement collect. par le Judge très reverend Monsieur Anthony Fitzherbert*: this was published in 1514.² A

¹ Pollock and Maitland *Hist. Eng. Law*, Vol. I., p. xxxv. Cf. also Pollock *A First Book of Jurisprudence*, Part II., Chap. 5 (1896).

² The edition which I used in the British Museum is dated 1565. "Leet et Hundred" are dealt with in Part II., ff. 80-91.

revised and enlarged edition was issued by Sir Robert Brooke in 1568.¹ Later *Abridgments* of course included later cases and in them the mediæval leet jurisdiction as portrayed in the *Year Books* was gradually obscured by the jurisdiction of the court leet as depicted in the modern reports. Nevertheless they have a high value. The following are the most important:—Henry Rolle's *Abridgment des Plusieurs Cases*, etc. (1668);² William Nelson's *Abridgment of the Common Law*, etc. (1726);³ Charles Viner's *General Abridgment of Law and Equity* (1742);⁴ John Comyns's *Digest of the Laws of England* (1762-67);⁵ William Cruise's *Digest of the Laws of England respecting Real Property* (1804).⁶

(c)—LATER REPORTS.

Beginning with Keilway's cases⁷ of the time of Henry VII. and Henry VIII., the later reports stretch in an unbroken—though uncoördinated, ill-organised, frequently over-lapping, variously valuable—series from Tudor days down to our own. During this long period an immense number of cases connected with courts leet came before the court of King's Bench, and since they usually found there judges strongly hostile to the claims and pretensions of all mediæval franchise jurisdictions, the verdicts given did not a little to hasten the decay of courts leet throughout the country.⁸

NOTE ON LANGUAGE.

Language gives us some indication of the date of origin of official mediæval documents. To speak generally, Latin was the official language in England till towards the end of Henry III.'s reign; then French began to encroach and the two ran side by side under Edward I. and Edward II.; from the close of Edward II.'s reign to the close of Edward IV.'s, a period of a century and a half, French had the monopoly; finally under Richard III. English suddenly superseded French and permanently established itself. Thus in the *Statutes of the Realm* (Ruffhead's edition) Latin is universal till 1386, when the statute 51 Hen. III. "De districtione scaccarii" appears (the title excepted) in French. French and Latin are intermingled from 1266 to 1324 (17 Ed. II.). From 1324 to 1432 (22 Ed. IV.) all are in French. But from that date English is universal, the first example being 1 Rich. III. (1485). The application of this generalisation to the *Statutum de Visu Franciplegii* would suggest that since it is in French, it was compiled not earlier than 1266. Its position in the statute book fixes it as not later than 1327.

¹ *La Graunde Abridgement*, etc., par le judge, etc. Syr Robert Brocke. In Tottell's edition, 1573, section 61 treats of "Lete et viewe de franke pledge et tourne de vicount." It takes them together, for it says: "Le powre dun vic. in torne et senescal in leete est tout un."

² *Court Leet*, Vol. I., pp. 541-3.

³ *Leet*, Vol. II., pp. 1108-12.

⁴ *Court Leet*, Vol. I., pp. 418-30.

⁵ *Leet*, Vol. III., pp. 657-84 in 4th Edition, 1800.

⁶ *Court Leet*, under *Franchises* in Vol. III., pp. 266-70 of 2nd Edition, 1818.

⁷ *Relationes quorundam Casuum selectorum ex Libris Roberti Keilway*. London, T. Wight, 1602.

⁸ For a list of the reporters with some account of their work see J. W. Wallace *The Reporters Chronologically Arranged* (1855), and C. C. Soule *The Lawyer's Reference Manual* (1883). For a list of leading cases relating to leet jurisdiction see below Appendix III.

CHAPTER III.—LEGAL COMMENTARIES.

§1.—Mediæval Treatises.

On the basis of the common law, as modified and supplemented by statutes, and as interpreted, restricted, and extended by the judiciary legislation of the courts, from small beginnings in the twelfth century, an immense legal literature sprang up in England. Its earliest outshoot was the *Tractatus de Legibus et Consuetudinibus Regni Angliæ* ascribed to Ranulf de Glanvill, the justiciar of Henry II., who died in 1190. This work contains nothing to our purpose. We need not, however, feel surprised or disappointed at that. For when the *Tractatus* was written the minor judicial and administrative rights which were later grouped under the head of leet jurisdiction were either separate and distinct *privilegia*, with no necessary connection one with another, or else had not yet come to be formally claimed by the king as part of his prerogative. Moreover, the sheriff's tourn, which in the fifteenth century—after three hundred years of attrition—served as the type and model of the modest jurisdiction of the leet, was in the twelfth century an important instrument of royal administration, with powers far larger than were allowed to any private courts, save those of the greater honours and franchises. The thirteenth century saw rapid development in two directions; on the one side it saw the beginning of the systematic humiliation of the tourn,¹ and on the other the definition of the minor *regalia* allowed to privileged manorial and municipal courts. But, apparently, in 1250 the development was not sufficiently far advanced to strike the attention of Henry de Bracton, the greatest of English mediæval lawyers, who about that date wrote his classic treatise *De Legibus et Consuetudinibus Angliæ*, for he is as silent as Glanvill concerning both the sheriff's tourn and the nascent leet jurisdiction of his time. But before the end of the century, and no doubt under the influence of Edward I.'s vigorous judicial reforms, the silence was broken, and no less than three lawyers, almost simultaneously, about the year 1290, made clear (though by no means mutually harmonious) statements of the articles of the view. These three were, first, the anonymous

¹ E.g. by the encroachments of coroners and *custodes pacis* and by the restrictions of Magna Carta, 1215, and the Statute of Marlborough, 1267.

writer usually known as "Fleta,"¹ secondly Britton,² and finally Andrew Horne who, though a convicted imposter in great matters, may perhaps be trusted in small ones.³ Each of these gives a more or less detailed account of both sheriff's tourn and view of frankpledge.

§2.—Mediæval Court Keepers' Guides.

At the same time that these formal and systematic treatises on law were being compiled, there were also being written, for the practical guidance of sheriffs and stewards and other holders of local courts, the earliest examples of a series of lists of the articles of the view, similar to those which in the sixteenth and seventeenth centuries formed the nucleus of the lengthy and detailed court keepers' guides of the era of the fully-developed court baron and court leet. Several of these have recently found their way into print in the volumes of the *Rolls Series* and the publications of the Selden Society; others still remain in manuscript.

(a) The oldest list at present known is given, under the curious heading of *Articuli Intrandi*, in a document entitled *De Placitis et Curis tenendis* contained in a manuscript volume, now, through the gift of George I., in the possession of the Cambridge University Library.⁴ The date of this volume is fixed by internal

¹ *Fleta seu Commentarius Juris Anglicani*, edited by John Selden, 1647. For some account of this treatise see Reeves *Hist. Eng. Law*, II, 171-2.

² Britton *Leges Angliae*, edited by F. M. Nichols, 1865. Cf. also Reeves *Hist. Eng. Law*, II, 173-6.

³ Horne *Le Mireur à Justices*, edited for the Selden Society by W. J. Whittaker, with an introduction by F. W. Maitland, 1895. Although the *Mirror of Justices* was regarded by Sir Edward Coke as a "learned treatise of the laws and usages of this Kingdom whereby the commonwealth of our nation was governed about eleven hundred years past," i.e. in the very earliest days of the Anglo-Saxon settlement, the days when the pagan invaders were struggling with King Arthur, it has been proved indisputably by Professor Maitland to have come from a no more ancient period than the reign of Edward I., and to have been composed, not by any of the great lawyers of the time, but by some man comparatively ignorant of law and, what is worse, a wilful and malicious perverter of the truth. Many lines of evidence converge to suggest that the culprit was one, Andrew Horne, a youth who some thirty years afterwards (1320) in his more sober and responsible age became Chamberlain of the City of London, and did useful antiquarian work in getting together statutes, charters, and other documents, some of which still remain in the archives of the Guildhall. Professor Maitland, with his profound knowledge of mediæval law, has no difficulty in showing that the treatise is a mass of malignant error, and that it is unsafe to accept "any statement made in the *Mirror* and not elsewhere warranted." But he does more; he discovers the perverse "motives" of the writer—his zeal for religion (1), his enthusiasm for equality, his hostility to an absolute monarchy and a privileged nobility, his detestation of the judges. Hence he makes it possible for students of the *Mirror* to discriminate, and to some extent to separate the modicum of truth (by means of which the large doses of falsehood were rendered palatable) from the falsehood it was intended to convey. There seems no reason to believe that the chapters "Concerning Turns" and "Concerning the View of Frankpledge" are seriously vitiated by any corrupting prejudices. Thus the enumeration of the "Articles of the View" may be allowed to be worthy of attention, even though one would refuse to accept any novel statement therein contained. For what may be called the Pre-Maitland view of the *Mirror* as a "most valuable" source of legal information, see Reeves *Hist. Eng. Law*, II, 232-238.

⁴ Camb. Univ. Library MSS. Ee. I. 1, f. 233: printed by Prof. Maitland in his *Court Baron*, pp. 68-77, where the suggestion is made that "intrand" is a miscopying of "inquirendi."

evidence at about 1269.¹ The list of articles which it contains is exceedingly brief and, when compared with later lists, strikingly incomplete, but it is valuable as coming from the dark period anterior to the legal renaissance of Edward I.'s time. Moreover, it is followed in the manuscript by a series of typical cases, or model pleadings, which reveal in a luminous manner the actual working of a thirteenth century manorial court possessing the view of frankpledge and its then appendant franchises.

(b) Second in order of time come three sets of articles of the view—all found in a fine folio book, of date about 1307, also in the Cambridge University Library.²

The first of these sets, written in Latin, occurs in a tract entitled *Modus tenendi Curias*, and it applies specifically to a manorial court. Having given the complaints “in curiis simplicibus,” i.e., in courts not possessing the right to hold the view of frankpledge, the tract proceeds: “Modo restat videri de querelis magne curie et de capitulis querendis in eadem,” and under this designation—“plaints of the great court and heads of inquiry therein”—it gives in brief epitome a summary of the articles of the view.³

The second set, written in French, is not attached to any specific court. Its title runs: “In sequentibus videndum est de visu franciplegii.” The third and last set—like the first in being in Latin, like the second in being unattached—comes under the lengthy and descriptive heading: “Hec sunt capitula que debent inquiri ad visum franciplegii in singulis locis Anglie ubi homines sunt in decena.” As neither of these lists of articles has as yet been put into print, I have not only summarised them in my next section, but have given the full text in an appendix.⁴

(c) Our next authority is a very notable one. It is a tract or stewards' guide, of date 1340 or slightly later, entitled *Modus tenendi Curias*,⁵ and containing an ideal description of an imaginary manorial “curia de visu franciplegii” held in the fourteenth year of the reign of Edward III.⁶ In this tract the

¹ Maitland *Court Baron*, p. 13.

² Camb. Univ. Library MSS. Dd. vii., 6.

³ This tract is printed in Maitland's *Court Baron*, pp. 79-92, while the manuscript from which it is taken is described in the same volume, pp. 13-16, and also in the Introduction to Mr. F. M. Nichols's edition of Britton.

⁴ See Appendix IV.

⁵ Camb. Univ. Library MSS. Ee. iv., 20. Printed in Maitland's *Court Baron*, pp. 93-106.

⁶ “Curia de visu franciplegii tenta apud Weston die Jovis proxima post festum Sancti Luce anno regno regis Edwardi tercij post conquestum quarto decimo.”

"articles which are to be presented" are given in the form of a model charge supposed to be delivered by the steward of the manor of Weston to the "francplegges," who act as "presentours" in the court. The tract as a whole resembles more closely than any other dealt with in this chapter the court keepers' guides of later times. The articles are preceded by directions, though scanty ones, for holding the court, for taking essoins, for charging the presenters, and for putting them on their oath.¹ They are followed by a long series of illustrative examples, which would appear to be not real cases (though their details are often vividly realised), but imaginary ones, similar to those which at the hands of the great juriconsults of classic days so copiously enriched the law of antique Rome.

(d) Finally, in the *Liber Albus* of the City of London—published among the *Munimenta Gildhallæ* edited for the *Rolls Series* by Mr. H. T. Riley—are to be found three copies of the articles of enquiry for the wardmotes, which in London exercised the functions of the leet. One of these, entitled *Articuli de Wardemotes*, is in Latin; the others, *Inquisitiones Wardemotarum*, are, the titles excepted, in French.² All these are highly valuable since they give a picture of leet jurisdiction appendant, not to a hundred court or to the court of a manor, but to the courts of a great municipality. In another part of the *Liber Albus* (pp. 36-39) are given full and most interesting rules, under the heading *Quid est Wardemotum?* for the holding of the courts. It is not easy to assign dates to these documents, for though the *Liber Albus* was compiled about 1419, they are probably of much earlier origin. The language test³ would indicate that the Latin version at any rate is a century older.

§3.—Modern Treatises.

We may regard the introduction of the art of printing as marking the beginning of the modern era in legal history. The manuscript commentaries, the collections of cases, the guides and handbooks which hitherto had been the exclusive possession of the favoured few, became the property of the many, and in becoming the property of the many they exerted an influence in the direction of the standardisation of judicial institutions,

1 "Icy delit le seneschal charger les francilogges de articles que sonnt a presenter a cele court e dirra enal a la presentour le bedel tendra un livre en sa mayn e le seneschal dirra Tenez vos meyns vous devez loialment enquerer entre vous e lelement presenter touz les articles des queux vous serrez chargez de part le Roy e le seigneur dy ceste court a vostre scient si le aide Dieux al jour de jugement."

2 *Liber Albus* (*Rolls Series*), pp. 257-60 and 337-38.

3 See the note on language at the end of Chapter II.

whose importance it is difficult to exaggerate. Legal theory began to operate powerfully in another way than by means of statutes and judicial decisions; it became an educative agent ceaselessly and ubiquitously moulding the minds of administrators, silently but effectively determining the fate of institutions. Though no English lawyer ever formally acquired a right to make law corresponding to the Roman "*jus respondendi ex auctoritate principis*," yet hardly Papinian himself spoke with a more effective authority than did some of the great Tudor and Stuart jurists, or was a more real source of law than were they. Whatever may have been the origin of their authority, their wide-reaching power was in fact largely a power given to them by the press. Hence, if, in the sixteenth century, in the matter of the leet, legal theory after long struggle triumphed, and if mediæval leet jurisdiction became transfigured into the modern court leet, no small share in securing the victory (such as it was) must, I feel, be ascribed to the potency of the printed page. We turn, then, to early modern legal publications concerning the leet with a double interest; on the one hand, we go to search them for a descriptive picture of the ideal court leet of the legal imagination; on the other hand, we go to discover in them powerful formative forces, which did more than anything else to realize the ideal—in so far as it was realized—in the local courts of England. Most of our attention, of course, has to be given to the court keepers' guides, which are to be dealt with in the next paragraph. But we must not neglect the more general treatises, and in particular must note (a) in the seventeenth century Sir Edward Coke's *Institutes*;¹ (b) in the eighteenth century Sir William Blackstone's *Commentaries*;² (c) in the nineteenth century Sir J. F. Stephen's *History of the Criminal Law of England*.³ For the most recent period, moreover, we shall find some information in treatises on the law of real property,⁴ and especially in works on copyhold, concerning which, since they are the lineal descendants of the manorial court keepers' guides, I shall have to say more in a moment.

¹ *The Institutes of the Laws of England*, Book II., on Magna Carta, §§ 17 and 35; Book IV., Chap. 53, *The Court of the Tourne*; and Chap. 54, *The Court of the Leet*.

² *Commentaries on the Law of England*, Book IV., Chap. 19, *The Court Leet or View of Frankpledge*.

³ *History of the Criminal Law of England* (1883), Vol. I., pp. 68, 82, 84, 180.

⁴ E.g., Williams *Law of Real Property*, and Digby *History of the Law of Real Property*.

§4.—Modern Court Keepers' Guides.

We have seen that in the Cambridge University Library is preserved a manuscript, *Modus tenendi Curias*, of date c. 1340, which is clearly an early and undeveloped form of the manorial stewards' handbook, or court keepers' guide. There can be no doubt that similar manuscript mentors continued to be written during the later fourteenth and the fifteenth centuries, and equally there can be no doubt that at the hands of the lawyers they were enlarged and improved. But, unhappily, either no copies have survived (which is improbable), or (as is very likely) they have escaped my notice. I at present know of nothing of the exact type of the stewards' manual to bridge the gulf between the manuscript of c. 1340 and the earliest of the extant printed guides of date c. 1510: it is, however, quite obvious to the student that the early printed guides—which differ from one another by hardly so much as a word—are mere reproductions of an already established and widely recognised manuscript authority. From the beginning of the sixteenth century, however, the chain is unbroken. The frequency with which new editions of these little manuals were published testifies to a wide and continuous demand, and, as I have already remarked, goes far to explain the completion of the standardisation of leet jurisdiction in England during the Tudor period.

The printed court keepers' guides of the sixteenth and following centuries seem to me to be divisible for purposes of classification into four groups, which I will broadly distinguish by the labels (a) Early Tudor; (b) Late Tudor and Early Stuart; (c) Late Stuart; (d) Hanoverian. Under each head I will give the leading representatives of the group which are to be found in our three great English libraries—the British Museum, the Bodleian at Oxford, and the University Library at Cambridge. Those of the first group alone are rare.

(a)—THE EARLY TUDOR GROUP.

The chief characteristic marks of this group are as follows: first, in no case is any author's name given, so that the volumes have to be distinguished by the names of the publishers; secondly, the volumes, although some of them contain emphatic professions of originality, are almost identical in form and substance with one another, and would all seem to be mere transcripts of one common source; thirdly, the more formal

parts of all are in Latin ; fourthly, there is no mention in the “charge of the lete” of any distinction between matters presentable only and matters both presentable and punishable ; fifthly, there is no sharp distinction, except in point of jurisdiction and procedure, between court baron (called simply “the courte”) and court leet (called “the lete”) : the two are described as meeting at the same time and place, as having the same jury, and as using the same court roll ; moreover, in the model roll which is given, the leet entries appear under the general heading, “Entres del Courte Baron,” the only thing which marks them off from the other entries being that they are collected together at the end and are preceded by an inconspicuous sub-heading, “xii. pro rege,” together with twelve sets of initials and the abbreviation “jur.” The following are the chief representatives of this essentially mediæval group :—

- c. 1510. *Modus tenendi Curiam Baronis cum Visu franem plegii*, “emprynted at London in Flete Strete at y^e sygne of the sonne by me Wynkyn de Worde.” (B. Mus. and Bod.)¹
- c. 1516. *Modus tenendi Curiam Baronis cum Visu frane' plegii*, printed by R. Pynson (B. Mus., where also is another edition, of date c. 1520).
- c. 1516. *Modus tenendi Unum Hundredum*, etc., printed by R. Redman (Camb. Univ.).
- 1521. *Modus tenendi Curiam Baronum*, printed by H. Pepwell (Camb. Univ.).
- 1523. *Modus tenendi Unum Hundredum sive Curiam de Recordo* (Bod.).
- c. 1529. *Modus observandi Curiam cum Leta*, printed by J. Skot (Camb. Univ.).
- c. 1530. *Modus tenendi Curiam Baronis cum Visu franci plegii*, printed by J. Rastell (B. Mus.).
- 1530. *Modus observandi Curiam cum Leta*, printed by R. Redman (Camb. Univ.).
- c. 1533. *Modus tenendi Curiam Baronum cum Visu franem plegii*, printed by R. Copelande (Camb. Univ.).
- 1533. *Modus tenendi Curiam Baronum cum Visu franci plegii*, printed by R. Redman (Bod.).

¹ The British Museum copy of this rare early printed book (C. 40, d. 56) bears the arms of the Marquis of Dorset, father of Lady Jane Grey, viz., Grey, Bonville, Harrington, Bourchier.

- c. 1534. *Natura Brevium et modus tenendi Curiam Baronis cum Visu franci plegii*, printed by W. Rastell (B. Mus.).¹
1539. *Modus tenendi unum Hundredum sive Curiam de Recordo*, printed by R. Redman (B. Mus. and Bod.).
- c. 1542. *The Maner of Kepynges a Court Baron and a Lete*, "impressum Londini in vico qui vocatur Fletstret per me Elizabeth Pykerynge viduam nuper uxoram (sic) spectabilis viri Roberti Redman" (B. Mus.).
1544. *The Maner of Kepynges a Court Baron and a Lete*, printed by William Middilton (B. Mus.).²
1544. *The Boke that teacheth to kepe a Court Baron*, etc., printed by T. Berthelet (B. Mus. and Bod.).
1546. *The Manner of Kepynges a Court Baron and a Lete*, printed by R. Toye (B. Mus., where also is another edition, of date 1569).³
1546. *Modus tenendi unum Hundredum sive Curiam [de] Recordo*, printed by Richard Kele (Bod.).
1546. *Modus tenendi Curiam Baronum cum Visu franci plegii*, printed by Henry Smythe (Bod.).

All the members of this "Early Tudor Group," though they come in point of time within the modern period, are essentially mediæval both in form and in substance.

(b)—THE LATE TUDOR AND EARLY STUART GROUP.

The early printed guides above enumerated, with their fellows, no doubt answered a useful purpose. But they had many defects, relics of their mediæval origin. There was too much Latin in

¹ Later editions of this work were published in 1567 (by Richard Tottell) and 1616, under the title: *La Nouvelle Natura Brevium du Judge Ant. Fitzherbert dernièrement venus et corrigé par l'auteur avecques un table per Guil. Rastell* (Bod.). The 1534 edition (the only one I have examined) includes sections on (1) Justyce of Peace; (2) Court Baron; (3) Court of Hundrede. Under the head of Court Baron comes (p. 591) "The charge of the lete." Again, in the section "Modus tenendi unum hundredum" comes the sub-heading (p. 407) "Extractus curie et lete," and the model entries are wholly undifferentiated, e.g. (a) De A. B. pro licentia concordandi cum C. D. in placito debiti; (b) De A. F. quia vendidit cervisiam per mensuras illicitas; (c) De A. A. pro fine decem acrarum terre; (d) De A. B. quia est communis regrator.

² One portion of this little book raises hopes of originality. It is headed: "Incipiunt nove addiciones que in aliis libris non habentur cum magna diligencia revisa." But examination reveals it to be identical, word for word, with the corresponding section of Elizabeth Pykerynge's edition, while this in turn differs in no essential from Wynkyn de Worde's edition of thirty years before. Truly, in these present degenerate days of conscience and copyright, we can but marvel at the boldness of our heroic ancestors.

³ One is not surprised to find in this book the identical section referred to in the preceding note, headed: "Incipiunt nove addiciones que in aliis [libris] non habentur cum magna diligencia revisa." Again there is not one word of variation from the earlier editions. I cannot but suspect that we are here in the presence, not of brazen lies, but simply of a publishing system which we do not understand.

them ; they did not distinguish, to the satisfaction of the lawyers, the court baron from the court leet, but still continued to treat the leet as merely appendant to the manorial or hundred court ; they did not give the steward the practical guidance which he needed as to what offences were punishable in the leet, and what merely inquirable ; their directions for holding the courts were inadequate, and their statements concerning jurisdiction unaccompanied by sufficient explanation and exemplification. But, above all, they defined only the common law powers of the leet, and consequently when, from 1523, frequent statutes began to heap new duties upon the court, they became hopelessly obsolete. By the time of Queen Elizabeth there was urgent need of something radically different from the mediæval *Modus tenendi Curias* which remained from edition to edition unchanged, in spite of “*novæ additiones*” copied verbatim from their predecessors, and in spite of revisions “*cum magna diligentia*,” which resulted in no innovations save a few unprecedented printers’ errors.

What was demanded was supplied in a work whose appearance marks an epoch in the history of leet jurisdiction in England. That work was :

- c. 1579. *Le Court Leete et Court Baron*, written in French (though with the model entries still in Latin) by John Kitchin, of Grays Inn, and printed by Richard Tottell.¹

In this volume the court leet and the court baron are treated in entirely separate sections, and the court leet is dealt with first, perhaps in order to emphasise the now-developed and matured legal theory of its non-appendancy. Then next, in the charge to the leet jurors, for the first time a clear and detailed distinction is drawn between offences, such as petty treasons and felonies, which, though inquirable and presentable in the leet, are not punishable, and offences of the minor kind which are punishable as well as inquirable and presentable. Thirdly, the offences which had in Kitchin’s day been recently placed by statute within the jurisdiction of courts leet are enumerated. Fourthly, a large number of cases collected from the *Year Books*, the *Reports*, and the *Abridgments* are grouped under topical headings to illustrate the common law powers of the leets. These

¹ The year 1579 is indicated by the date of the model precept, which remained the same in all subsequent editions, both French and English, viz., “1st of October 1579.” The Bodleian Library has three French editions dated respectively 1581, 1585, and 1598. For the later editions in English see below, under dates 1605-75.

improvements, taken together, mark a notable advance upon the older manuals, and serve to account for the immense and enduring popularity of John Kitchin's work. But still it was written in an alien tongue, which, though it was the language of the *Year Books*, *Reports*, and *Abridgments*,¹ was not the language of the stewards and other court keepers, still less the language of the suitors. Hence another step in advance remained to be taken, viz., the putting of a court keepers' guide into English. This step seems to have been left for one Jonas Adames to take a few years later :

1593. *The Order of Keeping a Court Leete and Court Baron with the charges appertayning to the same truly and plainly delivered in the English tongue for the profite of all men*, by Jonas Adames.²

This was followed by :

1603. *The Order of Keeping a Court Leet and Court Baron*, by Thomas Wight (another edition 1625).

The supremacy of John Kitchin's French treatise thus being challenged by its English rivals, which were obviously little more than translations of the more important parts of it, John Kitchin's book began to appear in English editions :

- 1605-75. *Jurisdictions, or the Lawful Authority of Courts Leet, Courts Baron, etc.*, "by the methodically learned John Kitchin of Grays Inn."

In its English form this work held its own, though with increasing difficulty, till near the end of the seventeenth century. A second edition was called for in 1623, a third in 1653, a fourth in 1663, and finally a fifth in 1675. Its most formidable competitor during the early part of the century was :

1620. *The Manner and Form how to keep a Court Leet*, by John Wilkinson (another edition 1638).³

Another notable legal manual of the period which dealt incidentally with the court leet (primarily in order to distinguish it from the court baron) was :

1630. *The Compleat Copyholder*, by Sir Edward Coke (other editions 1641, 1650, 1668, 1673, etc., down to 1764).

¹ Even Rolle's *Abridgment*, published so late as 1668, is in French.

² Two things may be noted regarding this book ; first, that the expression, "The court . . . if it be in a leete . . . and if it be in a court baron," bears evident witness to a not yet obliterated non-differentiation ; secondly, that the English tongue is not quite pure and unmixed in such phrases as, "Finis del charge de court leete."

³ Cf. also *The Office of Coroners and Sheriffs, with a Method for Keeping of Courts*, by John Wilkinson, 1618.

(c)—THE LATE STUART GROUP.

Kitchin's treatise, with all its novel virtues, is not without its serious defects. It is very lengthy (and therefore no doubt was in its day expensive);¹ it is extremely ill-arranged, so that it is difficult to find anything in it; its masses of case law are chaotic and undigested; it contains many irrelevancies and much preambulatory nonsense.² There was still room in the middle of the seventeenth century for a condensed and handy summary of this ponderous mass of material which Kitchin had collected rather, indeed, for "the students of the Inns of Court and Chancery" (to whom he had dedicated it) than for the manorial steward. John Wilkinson had done something to supply the want of a manual embodying Kitchin's innovations and yet convenient in form and bulk and suited to practical men. But the triumph of condensation, arrangement, and practicality came with the publication of:—

1641. *The Court Keepers' Guide, or a plaine and familiar Treatise needfull and usefull for the helpe of many that are imployed in the keeping of Law-dayes or Courts Baron*, by William Sheppard.³

The directions for holding the court leet are logically divided into nine chapters, and each chapter where necessary into numbered paragraphs. At the end of each chapter or paragraph, as the case may be, are added references to statutes, abridgments, and earlier legal writers, so that those who desire fuller information may know where to go. The preambulings and meanderings of Kitchin are simply omitted, with the result that the whole matter of the court leet is treated by Sheppard in about one-fourth the number of words employed by his predecessor.⁴

The standard of condensation, arrangement, and practicality set by Sheppard was more or less satisfactorily maintained by a

1 The fourth English edition (from the library of Peterhouse, Cambridge) which I have before me as I write, contains 581 octavo pages, apart from its index, and an appendix of 122 pages of "brevia selecta." The 581 pages are thus divided:—(1) court leet, 107, (2) court baron, with matters relating to copyhold and other tenures, etc., 406, (3) return of writs, 68.

2 The preamble (4th Ed., pp. 1-9) suggests the thought that "the methodically learned" John Kitchin would, could he but have known him, have had much sympathy with the Walrus in *Alice in Wonderland* when he said that the time had come "to talk of many things." For the preamble begins by considering "for what cause the King was ordained of God," goes on to ask "for what causes the laws were ordained," and winds up by inquiring "how ancient these courts are and for what causes and matters they were ordained." The whole discourse is worthless verbiage.

3 This admirable little hand-book continued in demand for a century and a half. It ran through eight or more editions, the last, apparently, being issued in 1791. I have before me (from the library of the Hartley University College) the fourth edition, dated 1658. Its 254 large-typed duo-decimo pages are thus distributed: (1) Court Leet, pp. 3-65; (2) Court Baron, pp. 66-96; (3) Copyhold, pp. 97-181; (4) other tenures, pp. 182-254.

4 Roughly 10,000 words as against 40,000.

series of successors, most of whose works show some novel features of form or of matter, calculated to make them acceptable to some special class of buyers. The most important are :—

1642. *The Jurisdiction of the Ancient Courts of Leet*, etc., by R. Powell (another edition 1688).
1650. *The Order of Keeping a Court Leet and Court Baron*, by W. Lee and D. Pakeman.
1656. *A Survey of the County Judicatures, commonly called the County Court, Hundred Court, and Court Baron*, by William Sheppard.
1657. *Pacis Consultum* describing the antiquity and Jurisdiction of Courts, especially the Court Leet, etc., by David Jenkins.
1668. *The Authority* of Courts Leet, etc., by William Greenwood (9th edition, 1730).
1701. *Lex Custumaria*, by S. C[arter] (another edition, apparently the last, 1796).
1702. *The Practice of Courts Leet and Courts Baron*, by Sir William Scroggs, sometime L.C.J. of England. (4th edition, 1728).
1713. *The Complete Court-keeper*, by Giles Jacob (8th edition, 1819).

(d)—THE HANOVERIAN GROUP.

At the time of the accession of George I., in 1714, leet jurisdiction was everywhere in decline. All the serious judicial powers of the courts leet had in fact passed, or were rapidly passing, into the more effective hands of the justices of the peace. The last new statutory duty which was imposed upon the leets (and even that they shared with the quarter sessions) was the duty of reading at every sitting the *Riot Act*.¹ But though leet jurisdiction was decadent, the courts leet of boroughs and manors continued to meet all over England. They still performed useful and indeed necessary police and sanitary functions. In many places they exercised the right of electing minor officials such as haywards and constables, and in some places major officials such as the portreeve or the mayor—a right which was not theirs *qua* courts leet, but which they inherited from the older general courts to which the leet juris-

¹ 1 Geo. I., stat. 2, cap. 5. It may be remarked in passing that this statutory obligation is still unrepealed, and further that in the Southwark court leet the *Riot Act* continues to be read year after year.

diction had originally been appendant. But above all they continued to meet because on the one hand (and that particularly in boroughs) they ministered to the popular love of self-government in an oligarchic age, and because on the other hand (and that particularly in manors) they kept alive the traditions of seignorial privileges in an age of growing democracy.

Hence the demand for, and the supply of, court keepers' guides showed no signs of falling off during the whole of the eighteenth century. Nor did those published at the beginning of the century depart in any marked degree from their predecessors of the Stuart period. But before the end of the century a rapid transformation was in process. The court keepers' guides were being transmuted into treatises on copyhold. In Sheppard's guide (1641) exactly one-third of the whole volume had been devoted to copyhold, as being the most important matter remaining within the jurisdiction of the manorial court baron.¹ In the treatises of George III.'s time the ratio of court keeping to copyhold is more than reversed. For example, in the standard and still valuable work of Scriven the jurisdiction of the court leet is dealt with in a single chapter—viz., chap. xxi. pp. 803-897—towards the close of the second volume, while the rules for holding the court are relegated to an appendix.² The process of this curious transformation is sufficiently indicated by the following titles:—

1726. *Lex Maneriorum*, by W. Nelson.³

1731. *History of the High Court of Parliament . . . and of the Court Baron and Court Leet*, by Thornhagh Gurdon.⁴

1761. *The Complete Steward*, by John Mordaunt.

1791. *Jurisdiction of the Court Leet*, by John Ritson (2nd edition 1809, 3rd 1816).⁵

1 Sheppard shows no recognition of a so-called "court customary," or copyhold court, as distinct from the court baron, or freehold court.

2 I quote from the third edition, the full title of which is *A Treatise on Copyhold, Customary Freehold, and Ancient Demesne Tenure, with the Jurisdiction of Courts Baron and Courts Leet*, two Vols. (1833). In the later editions, e.g., the sixth, by Mr. Archibald Brown (1882), the space devoted to court keeping is much cut down.

3 The arrangement is alphabetical. *Leet* occupies pp. 131-147.

4 A pretentious, but singularly worthless work. The writer begins his "History of Court Baron and Court Leet" (Vol. II, pp. 509-645) from the time "when the people went from Babel in tribes," whence he passes on to the age of the Hebrew patriarchs, which he leaves for that of the Germans of Cæsar and Tacitus!

5 John Ritson was steward of the Court Leet of the Savoy. He had a passionate love of leet jurisdiction, and he wrote this book under the delusion that "there is no offence which it [the court leet] ever did or could inquire of and punish which it may not equally inquire of and punish at this day." (2nd Ed., p. xviii). Ignoring Magna Carta and every subsequent restrictive enactment and legal decision, he claimed for the eighteenth century leets the fullest powers of the mediæval sheriff's tourn. His book, therefore, is more valuable as a guide to thirteenth century leet jurisdiction than to eighteenth. It is a legal anachronism.

1794. *A Practical Treatise on Copyhold Tenure with the Methods of Holding Courts Leet, etc.*, by R. B. Fisher (another edition, 1804).
1794. *Laws respecting Copyholds and Court Keeping*, by Henry Fellowes (another edition 1799).
1797. *A Treatise on Copyholds*, by Charles Watkins (4th edition, 1825).
1816. *A Treatise on the Law of Copyholds, etc.*, by J. Scriven (7th edition, 1896).¹
1837. *Copyhold and Court Keeping Practice*, by Rolla Rouse.
1874. *A Treatise on the Law of Copyholds*, by C. I. Elton and H. J. M. Mackay (2nd edition, 1893.)

§5.—Conclusion.

I have now completed my descriptive survey of the chief sources of information concerning the legal or theoretical aspect of leet jurisdiction and the court leet. It will have been noted that I am inclined to draw a broad distinction between the statutes, reports, treatises, and manuscript guides of the mediæval period on the one hand, and the corresponding authorities of the era following the introduction of printing on the other hand. Though it would certainly be a mistake to draw the distinction sharply, yet I think it will in the main hold good that the mediæval authorities were primarily concerned to define and delimit *leet jurisdiction*, which they regarded as a collection of minor franchises derived directly or indirectly from the king, and as appendable to any court of the nature or rank of a hundred, borough, or manorial court, or even to a messuage, which was no court at all; but that the modern authorities, especially Kitchin (c. 1579), his contemporaries and his successors, were primarily concerned to define and delimit the *court leet*, which they regarded as peculiarly a manorial court, closely associated with, yet separate from, the court baron of the manor. Taking this broad distinction as a working hypothesis, I propose to consider in the next section of my essay the mediæval authorities and their definition of leet jurisdiction, reserving for the succeeding section a discussion of the court leet as depicted by the modern authorities.²

¹ The account of the court leet which I found in the third edition of Scriven's *Copyhold* (1833) Vol. II, pp. 803-897, I regard as my most valuable source of information concerning the court in legal theory. I have not seen the first and second editions.

² For modern constitutional and legal historians who have dealt with the court leet in their writings, see bibliography at the end of the volume.

Section II.—Leet Jurisdiction in the Mediæval Authorities.

CHAPTER IV.—THE MEDIÆVAL ARTICLES OF THE VIEW.¹

§1.—Introductory.

In this chapter I propose to take *seriatim* and in chronological order (in so far as that can be determined) the mediæval authorities which I have described in the opening sections of the preceding chapter, and to summarise in the briefest possible epitome what each in turn tells us about the tourn and the view of frankpledge. Although this method will make the chapter unwieldy, and although it will involve the printing in wearisome iteration of half a score of somewhat similar sets of "articles," I feel that no other method would enable us to draw from our authorities all they have to teach us concerning the development of leet jurisdiction during the middle ages; for not only are no two lists of articles alike, but, what is very remarkable, there is not one single article which appears in every list. Moreover, in matters of constitution and procedure the authorities speak with voices so different and so dissonant, that any attempt to combine and harmonise them before analysing and resolving them would be vain.

§2.—*Articuli Inrandi*, c. 1269.²

(a)—THE COURT dealt with in the tract *De Placitis et Curii tenendis*, from which these articles are taken, is supposed to be a seignorial hundred court or manorial court, whether on royal demesne, or in the hands of a great magnate—earl, baron, knight, bishop, or abbot. The steward (*senescallus* or *clericus*) is, on behalf of his lord, paying a visit and holding a great

¹ This chapter may be omitted by those who do not wish to make a detailed study of the development of leet jurisdiction in the middle ages.

² For full text see *Maitland Court Baron*, pp. 68-77.

court in the course of his accustomed half-yearly circuit round his lord's liberties and manors to take the view of frankpledge.¹ As to title, the court is called simply "hundredus vel curia"; it is an undifferentiated court, for, though the steward is primarily concerned with the business of the articles, he is open to deal with any *querela*, *placitum*, or *casus contingens* which he deems of sufficient importance to engage his attention.

(b)—THE ARTICLES OF THE ENTRY² relate in order to:—

1. Frankpledge: are all of the age of twelve enrolled?
do the capital pledges do their duty?
2. Suitors: are all present?
3. The franchise: is it kept?
4. Assizes of Bread and Beer: are they observed?
5. Hue and cry: is it levied and pursued?
6. Bloodshed: has any occurred?
7. Watercourses: have any been diverted?
8. Walls, ditches, and ways: have any been newly made?
9. Strangers and evildoers: are any harboured?
10. Watch by night: is it duly kept?
11. Bridges, causeways, and roads: are they in good repair?
12. Tolls: have any been wrongfully levied from travellers?
13. Miscellaneous: "*postea de ceteris querelis, placitis, et casibus contingentibus.*"

(c)—THE MODEL ENTRY succeeds the enumeration of the articles.

The steward must make a roll.³ The following examples are given to him at some length as guides: they come in the same order as the articles, and according to these I number them—
(1) *Frankpledge*. N. M. is amerced 6d. because his twin sons, aged twenty, are not in tithing; also 12d. because he has let a house to a stranger who is not in frankpledge. R. S. is amerced 2/- for concealing the fact that two men from his tithing have,

¹ "Item sciat quod tantum bis in anno tenetur curia visus francplegil," p. 68. For an example of this tourn of a steward see the rolls of the manors of the Abbey of Bec (1246-1296), printed in Maitland's *Select Pleas*, pp. 1-47. The steward of the Norman abbey visited and held courts at a large number of single manors dotted about in divers English counties, from Devonshire to Norfolk and from Warwickshire to Sussex.

² If the title of the text, "articuli intransdi," be correct, it may mean "the articles of the stewards' entry, visit, or tourn." Professor Maitland, however, suggests the emendation "articuli inquirendi."

³ "Et sciendum quod clericus curie debet omnia abbreviare scilicet que sunt facta in curia prout contingit de facto," p. 72.

without licence, departed from their lord's land. (3) *The Franchise*. A right to fish has been interfered with by a neighbour; the bailiff and the whole community are to go *en masse*, and by fishing re-inforce their right. (4) *The Assizes*. W. H. is amerced 6d. because his last brew was not according to the assize; in future, four gallons of beer shall be sold for one penny, and four loaves of bread for one penny. (5) *Hue and Cry*. The hayward and a neighbour of his are ordered to "make fine for mercy" (*facere finem pro misericordia*), because their wives have wrongfully raised the hue in the course of a quarrel, during which they waxed so hot that (delightful word-picture!) "pugnabant per capillos." Further—and very notably—a housebreaking thief, captured with his booty, is brought into the court, is appealed, is found guilty by the verdict of the neighbourhood, is condemned, and is hanged. (13) *Miscellaneous*. Under this last general and comprehensive heading the steward deals with, first, essoins; secondly, a dispute between A. and R. concerning the reaping of a certain piece of land; thirdly, a complaint by R. that C. has unlawfully fished in his pond; fourthly, a complaint by widow N. that the pigs of her neighbour R. have entered her garden and rooted up her beans and cabbages;¹ fifthly, an accusation of assault and battery committed by R. and two of his serfs upon N.; sixthly, a dispute respecting rights of pasturage; finally, charges of default of work, of bad ploughing, and of trespass.

(d)—NOTABILIA.

The following points seem worthy of note. First, in only one case, viz., that of the wrongful raising of hue and cry, are we told who are supposed to make the presentments in this model court: in this one case the presentment is attributed to "such-and-such four townships or chief pledges" (*tales iiii. villate vel capitales plegii*). Secondly, the hand-having thief is represented as putting himself "on the verdict of the neighbourhood," which would appear to imply the presence of a jury wholly distinct from the chief pledges. Thirdly, the fact that the hand-having thief is regarded as punishable at all in this court is significant. We shall find few instances, imaginary or real, in authorities of

¹ Widow N. claims 2/- for material damage and 1/- for moral and intellectual damage (*quod noluit babuisse dampnum pro 2/-, nec pudorem pro 12d.*). It is interesting to note that R. does not deny the charge, but contends that he is not bound "to answer the unsupported plaint of a widow." The court concurs; and the widow, so far from getting any redress, has to pay an amercement of 8d., "*quia non habuit sectam*," i.e., I suppose, because she has not observed the required formality of bringing a body of "oath-helpers" to reinforce her "simplex vox" or naked word.

later date than the thirteenth century, of the punishment of a felon in an ordinary petty seignorial court.¹ The inclusion of this particular case here is perhaps explained by the fact that theft was the last of the major offences to be claimed as a plea of the crown, and that among thieves the manifest thief caught with his booty on him was the latest to be rescued by the king's judges from summary local vengeance.² We catch here, then, a parting glimpse of a gallows in a leet.³

§3.—*Statutum Wallie*, 1284.⁴

(a)—THE COURT whose functions are defined in the section of the *Statutum Wallie* under review is no imaginary or ideal court, but the sheriff's tourn, "*visus et terminus vicecomitis*," as introduced into the Welsh principality by Edward I. Every year, decrees the statute, the sheriff shall make his journeys—one after Michaelmas and one after Easter—through all the "*commotes*" (*i.e.*, cantreds, or hundreds) of the district under his charge, and in each "*commote*" shall hold a court, to which shall come all landholders, and also all resiants, except clergy and women. The sheriff is directed to enquiry on the oaths of twelve or more discreet and respectable free-holders concerning a long series of *capitula* or articles of the tourn.

(b)—THE ARTICLES OF THE T'OURN, in fine confusion, relate to :—

1. Traducers of king, kingdom, queen, and royal children.
2. Thieves, homicides, robbers, murderers, incendiaries.
3. Accessories of thieves, viz., butchers who have trafficked in stolen meat, whiteners of stolen skins, "*re-dubbers*" of stolen garments.
4. Outlaws and exiles returned.
5. Defaulters from the court of the Itinerant Justices.
6. Rape.
7. Treasure trove.
8. Watercourses diverted.
9. Rights of way interfered with.
10. Encroachments on public highways.
11. Counterfeiters of money or the king's seal.
12. Evildoers in parks and warrens.

¹ Cf. *Records of the City of Norwich*, p. cxxxvii.

² Cf. Pollock and Maitland *Hist. Eng. Law*, Vol. II., p. 495.

³ The right to have one, however, and to use it in cases like this, where "hand-having and back-bearing" thieves are caught with their booty, is recognised, as we shall see, in Britton (c. A.D. 1290).

⁴ The full text of this act of 12 Ed. I. will be found in old editions of *Statutes of the Realm*, e.g., Ruffhead *Statutes at Large* (1763, etc.), Vol. IX., Appendix, p. 4).

13. Prison-breakers.
14. Stealers of doves from dovecotes.
15. Breakers of the enclosures of parks.
16. "Forsteal" or waylaying.
17. "Hamsocn" or housebreaking.
18. "Theftbote," or the coming to a private settlement with a thief whereby the king loses his right to the goods of the felon.¹
19. False imprisonment.
20. Usurers.
21. Movers of boundary marks.
22. Assizes of bread and ale.
23. False weights and measures.
24. Harboursing of strangers.
25. Bloodshed.
26. Hue and cry.
27. Breaking into sheepfolds in order to shear or flay the sheep.
28. Entering fields in autumn and stealing the crops.
29. Withholding from the king his feudal and other rights.

(c)—PROCEDURE.

Having enumerated the articles of enquiry, the statute goes on to define the powers of the sheriff "in visu et in turno suo," and to explain the corresponding duties of the jurors and the commonalty. All the inhabitants of the "commote" are to be required to swear that they will make true presentment of all offences to the twelve or more *juratores*, and will conceal nothing from them. If the jurors know, or receive word of, any persons whose offences incur the penalty of loss of life or limb, they are to present their names *secretly* to the sheriff, so that the accused may not get wind of the accusation and escape. Such serious offenders shall be arrested by the sheriff, and either kept in prison or released on bail as he thinks fit. Persons, on the other hand, who are accused of minor offences only, shall be dealt with openly and there and then.²

(d)—NOTABILIA.

It will be remarked, first, that, though the court is called (after its English model) "*visus et turnus vicecomitis*," there is

¹ For "theftbote," as used in a different sense, viz., the receiving of stolen goods from a thief in return for help to escape, see *Mirror of Justices*, Chap. xxii.

² "De ceteris capitulis secundum quod inquisierit statim fiat correctio et debita executio in omnibus supradictis."

no mention of frankpledge in the statute: Edward I. did not attempt to introduce this alien system of mutual guarantee into Wales. Secondly, it will be observed that felonies, and even those most serious of all crimes afterwards by statute¹ set apart as treasons, come within the scope of the sheriff's enquiry, and further that they are intermingled, without any attempt at classification, with all kinds of petty offences. This list taken as it stands, without any qualifications, may, I think, be regarded as depicting the English sheriff's judicial power at its height, *i.e.*, as it was immediately after the issue of the Assize of Clarendon (1166), and before the inquest of sheriffs (1170), the institution of coroners (1194), and the issue of Magna Carta (1215) had commenced the process of the reduction of shrieval authority. Thirdly, it will be noted that the classification and distinction which is *not* made in the list, *is* made in the rules of procedure. Persons accused of the graver crimes to which the penalty of death or mutilation has been attached—*e.g.*, traducers of king or queen, murderers, robbers, incendiaries, coiners—are on the one hand to be indicted secretly, and on the other hand merely, so far as the sheriff is concerned, imprisoned or bailed. Obviously they are to be reserved for trial by the itinerant justices. The rule of Magna Carta is respected: "Nullus vicecomes teneat placita coronæ nostræ." Finally, it will be observed that the presentments are to be made to the sheriff by twelve or more free holders chosen by the sheriff to act as jurors (*juratores*), and that they in turn are to receive sworn informations *not* from the capital pledges, for there are none, but from the inhabitants at large.

§4.—Statutum de Visu Franciplegii.²

(a)—THE COURT to which this document refers is not named, but the expression "les seutours qi devient suite a ceste courte" in the first clause, coupled with the expression "villeins du seigneur" in the third clause, suggest the seignorial court with view of frankpledge.

(b)—THE ARTICLES OF THE VIEW enumerate in turn as proper subjects of enquiry:—

1. Suit: is it duly paid?
2. Frankpledge: are all chief pledges present, and are the tithings complete?

¹ 25 Ed. III., Stat. 5, Cap. 2.

² For full text of this pseudo-statute see old editions of *Statutes of the Realm*, 18 Ed. II., A.D. 1325, *e.g.*, Ruffhead *Statutes at Large* (1763, etc.) Vol. I., p. 185.

3. Villains of the lord : are any fugitive ?
4. Services due to the court : are they paid ?
5. Purprestures, or encroachments in lands, woods, and waters.
6. Annoyances caused by walls, hedges, etc.
7. Boundary marks removed.
8. Ways and paths improperly opened or closed.
9. Watercourses stopped or diverted.
10. Housebreakers.
11. Thieves, petty thieves, and thieves' messengers.
12. Hue and cry raised and not pursued.
13. Bloodshed and fray.
14. Escapes of thieves and felons.
15. Outlaws returned.
16. Rape (if not previously dealt with by the coroner).
17. Clippers and coiners of money.
18. Treasure trove.
19. Assize of bread and beer.
20. False weights and measures.
21. Haunters of taverns, having no visible means of support, and other vagabonds "who sleep by day and walk by night."
22. Cloth sellers and curriers dwelling out of merchant towns.
23. Abuse of right of sanctuary.
24. Improper release of offenders from prison.
25. Entrappers of doves.

(c)—NOTABILIA.

No rules of procedure are given, nor is there any hint as to the body by whom the presentments are to be made, save such as is contained in the closing words : "De touz ceux vous nous faites assavoir per le serement qe vous avez fait." But these words, taken in conjunction with the fact that the second article of enquiry is : "Si touz les chiefs plegges soient venuz," are sufficient to suggest that the presentments are to be made by jurors and not by chief pledges.

§5.—*Fleta's Articuli Visus Franciplegii*.¹

(a)—THE COURT in question is described in the title of the chapter containing the articles as "curia regis in turnis vice-

¹ For full text see *Fleta seu Commentarius Juris Anglicani*, edited by John Selden, 1647, Chapter 52 (pp. 112-114).

comitis et alibi." It is held before the sheriff (of the county) or the bailiff (of the private-hundred). There is no indication that any court below the rank of a hundred court is alluded to. The expression "curia regis" reflects the Edwardian determination to claim the view of frankpledge and its appendant franchises as *regalia*. The words "et alibi" indicate the co-ordination of the sheriff's tourn with the *magna curia* of the private hundred. In the introductory paragraph Fleta draws one noteworthy distinction: he distinguishes tourn from view of frankpledge; the tourn is to be held twice a year, once after Easter and once after Michaelmas, but the view of frankpledge is to be taken only once a year, viz., in the Michaelmas tourn.

(b)—ARTICULI VISUS FRANCIPLEGII, *i.e.* the articles of the Michaelmas tourn at which the view of frankpledge is held.

1. Frankpledge: are all chief pledges present, are all tithings complete, are all over twelve in tithing, and if not, why not?
2. Suit: are all over twelve present?
3. Burglars, robbers, thieves, coiners, homicides, burners of houses, and their accomplices.
4. Outlaws returned.
5. Treasure trove and waif.
6. Prison breakers, ravishers, abductors, malefactors in parks.
7. Maimers, wounders, and false imprisoners.
8. Usurers, soothsayers, apostates, traitors.
9. Purse-cutters and petty thieves.
10. Hue and cry.
11. Bounds removed, etc.
12. Watercourses turned or obstructed.
13. Walls, ditches, etc., raised or razed "*ad nocumentum*."
14. Ways and paths obstructed or narrowed.
15. Weights and measures.
16. Royal rights infringed.
17. King's villains remaining "*extra dominica sua*."
18. Villains of the lord found "*in alieno visu*."
19. Purprestures.
20. Concealed crimes ("*De felonii quorum clamor non pervenit ad coronatores*").

21. Assizes of bread and ale, etc.
22. Watch not set and ways not enlarged.¹
23. Detinue (*"de repligiabilibus injuste detentis"*).
24. Theftbote.
25. Approvers (*probatores*) detained.²
26. New customs in land or water.
27. Bridges broken.
28. Wreck of the sea retained.
29. Curriers not in cities or towns, and users of two trades.
30. *"Et plures sunt articuli."*

(c)—PROCEDURE.

A most noteworthy system of twofold presentment is described by Fleta. First, the chief pledges "respond to" the articles, that is, present offences under the several heads, and then, secondly, a jury of twelve free men review the presentments of the chief pledges and further enquire into offences which the chief pledges have concealed.³ The chief pledges and the jury of twelve free men are separate and distinct. The former may be taken to be lowly men, representing but small groups of folk and limited local areas; men, moreover, not free from suspicion of falsely accusing enemies and of keeping false silence concerning friends. The latter, on the other hand, would appear to be men of higher position, drawn from the larger area of the hundred and more free from personal and local prejudices. The words of Fleta do not authorise us to say that the chief pledges as yet make their presentments *to* the twelve; rather are the chief pledges depicted as making their presentments direct to the sheriff, but in the presence of the watchful and suspicious body of jurors who, on the one hand, revise and, on the other hand, supplement them. The matter is of considerable interest to students of leet jurisdiction, for it has been shown by high authority that in some cases at any rate the chief pledges developed into the leet jury.⁴ Here in Fleta we see a totally

¹ The words "*de viis regalibus non enlargatis*" used here in connection with the watch seem clearly to refer to the Statute of Winchester, §6: "*Comaunde est ensement qe les haux cheinlus des viles marchaundes as autres viles marchaundes seient enlargiz.*" If this be so, the date of these articles is fixed as subsequent to 1285.

² A *probator* was an accomplice in felony, who, to save himself, confessed his crime and accused his fellows.

³ "*Cum autem capitales plogli ad haec capitula distincte responderint non solum est eorum veredicto fides adhibenda, verumetiam sacramento et veredicto duodecim liberorum hominum qui super indicta. mentis praedictis et etiam de conclamentis praedictis oueruntur veritatem declarare.*"

⁴ Maitland *Select Pleas*, p. xxviii; and cf. Hudson *Leet Jurisdiction in Norwich*, p. xxvii.

different evolutionary development going on: we see the chief pledges, not only quite distinct from the jurors, but half-way along the process of transmutation into mere officials—into the constables of later times.

(d)—NOTABILIA.

We note in Fleta, first, his distinction of tourn from view of frankpledge; secondly, the system of two-fold presentment which he describes; thirdly, the fact that he separates in the usual manner the grave offences, which can merely be enquired into, from the minor offences (*leves injuriæ*), which can be dealt with summarily and completely; finally, a curious relic of the doctrine of specific redress, in the statement that if a person—presumably one in frankpledge—has committed a minor offence of the nature of removal of a boundary mark or obstruction of a road, the chief pledges may be called upon under certain circumstances to put things to rights again.¹

§6. **Britton's Articuli Turni et Visus Franciplegii. c. 1290**²

(a)—THE COURT of which Britton treats in the chapter under review is primarily the sheriff's tourn, but the explanatory statement that "that which before the sheriff is called the sheriff's tourn is in the court of a freeman and in franchises and in our hundreds called view of frankpledge," widens the scope of the chapter to the same limits as those of Fleta's chapter, "*de curia regis in turnis vicecomitis et alibi*." In Britton, even more emphatically than in Fleta, the distinction between tourn and view of frankpledge is recognised; for the articles of the tourn are given separately from the articles of the view of frankpledge.

(b)—THE ARTICLES OF THE TOURN relate to:—

1. Mortal enemies of the king, etc.
2. Counterfeiters of the king's seal or money.
3. Homicides and murderers.
4. Incendiaries.
5. Burglars, robbers, thieves.
6. Prison-breakers.
7. Rape.
8. Outlaws returned.

¹ "Cum autem de misis (? metis) remotis vel viis obstructis vel aliis diversis et hujusmodi levibus injuriis infra annum et diem perpetratis, contigerit aliquem indictari qui præsens fuerit, statim respondeat si velit; qui si noluerit vel absens fuerit præcipietur capitalibus plegiis quod illam injuriam sine dilatione ad usum debitum convertant."

² For full text see *Britton*, edited by F. M. Nichols, 1866, Vol. I., Chap. xxx (pp. 177-186).

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9. Sorcerers.
10. Apostates and heretics.
11. Traitors.
12. Poisoners.
13. Cut-purses.
14. Usurers.
15. Sellers of false victuals.
16. Whiteners of stolen skins.
17. Redubbers of stolen garments.
18. Treasure trove.
19. Hue and cry.
20. Waters stopped or diverted.
21. Roads obstructed, etc.
22. Boundaries removed.
23. Encroachments on common ways.
24. Petty thieves.
25. Theftbote.
26. False imprisoners.
27. Hamsock and pound breach.
28. Offenders in parks.
29. Pigeon stealers.
30. Assizes of bread and beer.
31. Weights and measures.
32. Affrays.
33. Watch.
34. Highways.
35. Detention in prisons other than the king's.
36. New franchises set up.
37. Waif and wreck.
38. Bridges, etc., broken.
39. King's rights withheld.
40. Royal franchises claimed.
41. Default of suit to the town.

(c)—THE ARTICLES OF THE VIEW OF FRANKPLEDGE.

1. Headboroughs (chief plëdges) : are all present ?
2. Tithings : are all complete ?
3. Persons who ought to be in tithings : are they
4. Vagrants not in anyone's " mainpast " : are the

(d)—PROCEDURE.

Britton describes a system of double presentment different in one important respect from the system of two-fold presentment as set forth by Fleta. It shows the chief pledges one stage farther on in the process of their development into mere officials. First in order are named the jurors: "Let the sheriff cause twelve of the most sage, lawful and sufficient men out of the whole hundred to be chosen, and to swear they will present the truth of the articles hereinafter mentioned." Then "afterwards the rest shall be sworn by dozens,¹ and by townships,² that they will make lawful presentment to the first twelve jurors upon the articles wherewith they shall be charged by them." Here the chief pledges or headboroughs are depicted as making their presentments to the jurors, precisely in the manner of the constables of modern times.

(e)—NOTABILIA.

We note, first, that Britton, like Fleta, distinguishes tourn from frankpledge, but that he does it by separating the articles of the one from the articles of the other; secondly, that a system of double presentment stands in place of Fleta's system of two-fold presentment; thirdly, that procedure in case of serious offences is sharply distinguished on the familiar lines from procedure in case of minor offences; fourthly, that "hand-having and back-bearing thieves" are still treated as a class apart: if such a thief is captured and brought with his booty into court, and the owner identifies and claims it, then the culprit can be tried and hanged there and then; finally, that Britton,—and in this I think he stands alone among lawyers—admits the general right of traverse in the case of presentments in the tourn: "If such jurors have wrongfully aggrieved any persons in their absence by their presentment, in such case the persons aggrieved shall have an action to be re-instated, by plaint in the county court, or by our writ if necessary, either against all the twelve jurors jointly, or against any of them severally, and if the plaintiffs cannot make good their plaints, then let the defendants recover their damages and the plaintiffs be in mercy."

¹ *Dozenes* — the personal tythings of ten or twelve men prevalent in the midland counties. Each tything would be represented by its chief pledge or headborough.

² *Les Villees* — the territorial tythings prevalent in the southern counties. Each vill would be represented by its headborough, or by its reeve and four best men.

§7.—*Le Mireur à Justices*. c. 1290.¹

(a)—THE COURT.

Book I., Chapter XVI., treats of the sheriff's tourn. "The sheriffs by ancient ordinance," it says, "hold general assemblies twice a year in each hundred, once after the feast of St. Michael, once after Easter. And because the sheriffs in order to do this make their turns (*font lur tourns*) through the hundreds, these visits are called the sheriff's turns (*turns de viscountes*.)" So far, so good. But then, just as in another section the pious author states that the prime object of the assembly of parliament is "the salvation of the souls of trespassers," so here he asserts that the purpose of the sheriff in going his rounds is "to enquire as to all personal sinners and into all the circumstances relating to sins committed in these hundreds." Neither parliaments nor sheriffs, even in that age of faith and forgery, were quite so evangelical as he would have us believe. Book I., Chapter XVII., deals with the view of frankpledge, which the author regards as not only separable in legal theory from the tourn, but also as separate in fact. It is held once a year, he says, not, like the tourn, twice; it is convened by the "hundreder," not, like the tourn, by the sheriff; matters which cannot be redressed at the view "must be presented at the first turn of the sheriff."

(b)—THE ARTICLES OF THE VIEW OF FRANKPLEDGE relate to:—

1. Suitors: are all present?
2. Frankpledge: are all "doseins" complete?
3. Fealty: have all over twelve sworn fealty to the king?
4. Bloodshed.
5. Hue and cry.
6. Mortal sinners.
7. Outlaws and exiles returned.
8. Usurers.
9. Treasure-trove, wreck, waif, stray.
10. Offences of officers.
11. Purprestures.
12. Boundaries removed.

¹ For full text see *The Mirror of Justices*, edited for the Selden Society by W. J. Whittaker. Book I., Chap. XVI (p. 38), "Of Turns"; Chap. XVII. (pp. 39-41), "Of the View of Frankpledge." After reading Professor Maitland's scathing exposure of the *Mirror of Justices* (Cf. above Chapter III, § 1), one cannot profess to regard this work as a high original authority on mediæval law. Nevertheless, like the now-proverbial egg of the curate, it is better in some parts than in others, and the part containing the "Articles of the View" seems less sulphurous than the bulk of the rest. At any rate, without pledging ourselves to devour it, we may be permitted to analyse it.

13. Assizes of bread, beer, etc.
14. Weights and measures.
15. Disturbers of justice.
16. Wrongful detinue.
17. False judgments.
18. Forstalment or waylaying.
19. Replevin and rescue and wrongful distress.
20. Bridges and public paths out of repair.
21. Redubbers of garments and whiteners of leather.
22. Sellers of corrupt victuals.
23. Thieves and their helpers.
24. Outrageous toll.
25. Traitors, deceivers, and conspirators.
26. "All other articles which may avail for the destruction of sin."

(c)—NOTABILIA.

It will be observed, first, that, though the tourn and the view of frankpledge are regarded as so completely separable as to be treated in separate chapters, yet all the articles are enumerated under the head of view of frankpledge; secondly, that the graver crimes—those which can be enquired of only—are omitted from the list, except in so far as they can be included under the vague title of "mortal sins" in the sixth article.

§8.—*Querele Magne Curie*, c. 1307.¹

(a)—THE COURT dealt with in this portion of the tract *Modus Tenendi Curias* is the ordinary seignorial court of a manor. The mode of holding the "curia simplex," or court baron, having been described, the writer of the tract passes on to treat of the "plaints of the great court and heads of enquiry therein." These are stated in briefest summary, unaccompanied by any rules of procedure.

(b)—THE HEADS OF ENQUIRY are as follows:—

1. Frankpledge: does each capital pledge know how many and whom he has in his tithing? and are all of twelve years of age in tithing?
2. Concealment of crime.
3. Usurers.

¹ For full text see Maitland *Court Baron*, pp. 87-88.

4. Runaway wives.¹
5. Coiners.
6. Weights and measures.
7. Outlaws harboured.
8. Felons' goods concealed.
9. Treasure trove.
10. Purprestures.
11. Strangers entertained beyond one night.
12. Persons not in frankpledge.

(c)—NOTABILIA.

A marked difference is evident between the first article and the rest, taken as a whole. The first is the article of the view of frankpledge, enquiry concerning which is made by some person or body of persons not named, but apparently *not* the chief pledges.² This enquiry concluded satisfactorily, the remaining articles are read out to the chief pledges, and they make answer to them.³

§9. *Videnda de Visu Franciplegii. c 1307.*⁴

(a)—THE COURT to which these articles relate is not definitely stated; but the reference in the third article to the villains of the lord indicates a seignorial court. The opening words of the paragraph containing the articles—"First you shall tell us by the oath which you have sworn whether all the suitors who owe suit to this court are come . . . and whether all the chief pledges are come"—suggest that the inquest is made not by the chief pledges, but by a body of jurors drawn from the more important men of an extensive lordship who are investigating the working of the frankpledge system in the various manors of the lordship.

(b)—ARTICLES OF THE VIEW relate to:—

1. Suitors: are they come?
2. Frankpledge: are the chief pledges with their tythings (*diseyns*) present, and are all of the age of twelve and over in tything? (*en la assise nostre seignur le rey*).

¹ "De uxoris fugitoris [et] quis eas retentat." Did they all go to one and the same man?

² "Primo Inquisitum fuit de visu franciplegii," etc.

³ This seems to be the meaning of the sentence: "Postea scribantur capitula subscripta et distincte eis legantur ut possint ad ea respondera." The persons referred to in the "eis" is not quite clear; with the chief pledges the other members of the tythings *may* be included, but this is unlikely, since it would appear that as a rule each tything was regarded as sufficiently represented by its chief pledge.

⁴ For full text see below, Appendix IV.

3. Lord's villains.
4. Customs and services due to the court.
5. Purprestures.
6. Walls, houses, ditches, hedges, made or destroyed "*en nusakan del poeple*."
7. Woods and thickets injured.
8. Boundary marks removed, etc.
9. Watercourses diverted or stopped.
10. Housebreakers, thieves, and their accomplices.
11. Hue and cry.
12. Bloodshed.
13. False weights and measures.
14. Tavern-haunters and idle vagabonds.
15. Evildoers in vineyards, parks, and rabbit-warrens.
16. Whiteners of leather.
17. Waifs.
18. Dove-stealers.

(c)—NOTABILIA.

There are no rules of procedure, but the closing words are to the effect: "Of the above matters inform us by the oath which you have sworn"—another suggestion of "*juratores*."

§10.—*Capitula que debent inquiri, c. 1307.*¹

(a)—THE COURT primarily dealt with in these articles is a seignorial court, for the phrases "*dominus curie*" and "*libertas domini*" occur. But the opening words expressly state that "the following are the heads into which enquiry ought to be made at the view of frankpledge in every place in England where men are in tything." Hence the articles should apply equally to sheriff's tourn and municipal leet. Before enumerating the heads of enquiry, the writer notes two things, viz., first, that the inquest should be made twice every year, once at Michaelmas, once at Easter; secondly, that each member of the jury should be called upon to swear that he will make a true presentment of all matters submitted to him on behalf of the king and the lord of the court.

(b)—THE HEADS OF ENQUIRY relate to:—

1. Freeholders: are all present according to summons?
2. Frankpledge: are all of twelve years of age in tything?

¹ For full text see below, Appendix IV.

3. Lord's franchise: does anyone in the lord's liberty carry suits outside it?
4. Thieves, incendiaries, homicides, robbers, and their accessories.
5. Coiners and clippers of coin.
6. Unlicensed brokers (*excambiatores*).
7. Chattels of Christian usurers.
8. Chattels of thieves.
9. Tavern-haunters and night-walkers.
10. Rape.
11. Treasure-trove.
12. Harbourers of strangers for more than one night.
13. Bloodshed.
14. Hue and cry.
15. Flyers from the king's justices-in-eyre.
16. Persons in frankpledge for whom the pledges will not vouch.
17. Purprestures.
18. Walls wrongfully set up or pulled down.
19. Watercourses diverted.
20. Ways stopped or turned.
21. Measures.
22. Assize of bread and ale.¹
23. Unauthorised redubbers of old clothes (*cissores campestris*).²
24. Unauthorised butchers (*carnifices campestris*).
25. Whiteners of leather.
26. Tanners of ill-fame.
27. Waif.
28. Watch.

(c)—NOTABILIA.

In no previous list have the freeholders (*omnes libere tenentes*) been mentioned as owing suit to the court. Their inclusion here is noteworthy because freeholders (who, of course, are not necessarily resident) owe suit, not to the leet, but to the court to which it is appendant; their suit is based on tenure. The first article of this list must therefore be regarded either as included by error, or as marking an immature conception of the nature of leet jurisdiction.

¹ "And be it noted that the assize of ale can be broken in four ways, viz., by selling ale at too high a price, or of quality below the standard (*minus sufficiens*), or before the tasters have assayed it, or by false measures."

² "Rustic tailors," *i.e.*, outside the liberties.

§11. Les Articles que sount apresenter. c 1340.¹

(a)—THE COURT in question is a manorial court with view of frankpledge. The description of the court—its jurisdiction and its procedure—is given in the form of a court keepers' guide. The steward begins by taking essoins, and then he proceeds to charge with the following articles the "francplegges," who are subsequently termed also "presentours" and "doseyners."

(b)—THE ARTICLES TO BE PRESENTED are :

1. "You presenters" : are you all here ?
2. Suitors : are all present ?
3. Frankpledge : are all of twelve and over in tything ?
4. Hue and cry.
5. Bloodshed.
6. Purpresture.
7. Watercourses and paths interfered with.
8. Petty thieves, great thieves, robbers, window-snatchers.
9. Harbourers of strangers.
10. Assizes of bread and beer.
11. Redubbers of stolen garments, melters-down of stolen plate, refashioners of stolen ploughshares.
12. Counterfeiters and clippers of money.
13. Outlaws and exiles returned.
14. Rape.
15. Tavern-haunters.
16. Unlicensed fishers, hunters, and fowlers.
17. Treasure-trove, waif, and stray.
18. Pilferers of corn in harvest time.
19. Usurers.
20. Receivers of stolen cattle or hides.
21. Stealers of horses or horseshoes.
22. Rescue and wrongful release.
23. False weights and measures.
24. Violations of crown rights generally.²

(c)—PROCEDURE.

The detailed and vivid picture of the procedure of this imaginary manorial court, which follows the enumeration of the articles, accords in an extremely interesting way with the outline sketch of procedure presented by Fleta. It is worthy of the

¹ For full text see *Maitland Court Baron*, pp. 93-106.

² "Et des que sont encontre le coroune enquerrez entre vous."

most careful attention. The following is the order of business as depicted by it. First, the chief pledges ("francplegges," "presentours," "doseyners"), having heard the charge, withdraw to enquire of the articles. Secondly, during their absence (1) the essoins of pleas are called on; (2) the beadle presents in writing his attachments and plaints; (3) private persons lay before the steward their grievances, *e.g.*, one a plea of debt and another a case of assault; and finally (4) a jury of twelve free tenants is chosen to listen to the presentments made by the chief pledges, to see that they make no concealment, and to supply their omissions, if there are any.¹ Thirdly, the chief pledges come back and make their presentments, which in the model entry follow almost exactly the order of the charge; they relate in turn to suit, tything, hue, bloodshed, purpresture, and so on through the list; there are two dozen in all.² Fourthly, the chief pledges having finished their presentments, the "dozen of free tenants who have heard the presentments" are brought forward. Their duty is not to traverse the findings of the chief pledges. These findings are evidently regarded as final; they have been made to the steward who read the charge and not to the twelve free tenants subsequently chosen. The duty of the twelve is to go afresh over the ground already covered by the chief pledges: the twelve are independently and anew "charged with all the articles"; they make a second series of presentments, representing the omissions of the first series, and the second series follows precisely the order of the first series and of the charge.³

(d)—NOTABILIA.

Here we see in full and exact detail the operation of that two-fold system of presentment revealed in uncertain outline by Fleta. We see two institutions—frankpledge and jury—existing side by side, co-ordinated, but not yet united; we see two

1 Maitland *Court Baron*, p. 97: "Ore doit le senechal fere elire xii. fraunk tenauntz, e als ne solent tantz par vetz vi. fraunkes e vi. bondes, qe pussent oler le presentment de presentour sil facent nul conseylement qils pussent presenter apres qe les douzeiners averent presents." With this compare p. 100: "Ore doit le senechal feare lever un douzeyne de frank tenauntz qe onnt oy ceaux presentementz e serrent chargeez de touz les articles e si les presentours ont feait nul consaylment ils le doivent presenter olaunz les auters presentours."

2 They are entered in Latin. The first one runs: "Presentatores dicunt quod abbas de B. debet sectam ad latum diem set non est hic. Ideo in misericordia." The lighter offenders are amerced; the more serious ones—thieves, colners, returned exiles, etc.—are ordered to be arrested and imprisoned pending trial.

3 "Inquisicio xii. liberorum onerata super presentationem francplegiorum dicit quod Geraldus de Insula debet sectam curie et non venit. Ideo in misericordia. Et sic de aliis."

bodies of men—the chief pledges and the twelve free tenants—doing one and the same kind of work, and doing it under conditions of awkward duplication and irritating suspicion which obviously cannot long be maintained.

§12.—*Inquisitiones Wardemotarum*.¹

(a)—THE COURTS to which these “inquisitiones” relate are widely different from the courts of hundred, franchise, or manor, to which all the preceding lists of articles have specially applied. They are the wardmotes of the City of London, and they have to administer the affairs not of a stationary rustic population, but of the rushing and changeful throngs of a metropolis. The City of London was, when the *Liber Albus* was compiled, divided into twenty-five wards, each under the immediate government of its alderman, who held a “wardmote court or inquest” once, twice, or oftener in the year, by virtue of a warrant received from the mayor. The “inquisitiones” give the business of these courts. As I have already mentioned, the *Liber Albus* gives three versions of the wardmote articles. The three are, however, so much alike that it seems unnecessary for me to summarise them separately. The following is in outline the composite picture which together they present.

(b)—THE ARTICLES OF THE WARDMOTES relate to:—

1. The king's peace: have any frays taken place?
2. Suspicious persons: are any disloyal or out of frank-pledge?
3. Women of ill-fame and common gossips.
4. Defective ovens and furnaces likely to cause fire.
5. Offences of taverners: use of unsealed measures, breach of assize, harbouring of evil persons and strangers.
6. Hucksters: are there any in the ward?
7. Houses not properly covered (*i.e.*, not tiled, but thatched).
8. Nuisances in streets and lanes.
9. Keeping of pigs and cows in the ward.²
10. Lepers: are any resident in the ward?
11. Usury.

¹ For full text see Riley's *Liber Albus*, Vol. I., pp. 257-260 and 337-338. Cf. also pp. 36-39.

² The French versions say merely “deluz la garde;” the Latin “in domibus.”

12. Purprestures.
13. Offences of bakers.
14. Night-walkers (*i.e.* in present day language, hooligans).
15. Offences of officers, *e.g.*, extortion and violence.
16. Maintenance and champerty.¹
17. Over-payment of labourers and artisans.
18. Undue projection of tavern sign-poles.
19. Provision of buckets of water for extinction of fire.
20. Weights and measures (which are to be inspected by the alderman four times a year).
21. Size of erections in front of houses.²

(c)—PROCEDURE is fully described in the *Liber Albus* (Vol. I., pp. 36-39). This is the account in brief: the alderman presides and with him are the more substantial men of the ward; he proclaims silence; the clerk reads the mayor's warrant; the bedell calls the roll, those absent are fined 4d. or more; the bedell then presents to the alderman a panel of jurors which has been drawn up by the constables, but which the alderman can amend if he thinks fit; the jurors are sworn in; the "articuli wardemotarium" are read over to them; a day is fixed by the alderman on which the jurors shall make their presentments; the court then passes on to elect constables, scavengers, aleconners, bedells, and other officers, to register licences, to regulate weights and measures, and to administer the oath of frankpledge. On the day appointed for the making of the presentments the jurors appear with two written lists of their verdicts, one they hand over to the alderman, the other remains with the ward. The alderman takes his copy and lays it before the mayor at the "Great Court of Wardmote," held once a year on Plow Monday, *i.e.*, on the first Monday after the Epiphany (Jan 6th).³

(d)—NOTABILIA.

First, it will be observed that though the "inquisitiones wardemotarium" show a general resemblance to the manorial "articles of the view," there are among them a large number of

1 Wrongful support of a man in a law-suit on condition of sharing in what he may get out of it.

2 Stalls are not to extend over 2½ feet into the street; penthouses are to be high enough to allow men on horseback to ride under them.

3 The oldest extant reference to this "Great Court of Wardmote" is contained in a resolution of the Mayor and Alderman, dated 1486. It runs that "each alderman in his ward should receive and take the verdicts and indentures of the wardmote inquests, till they come to the Gulldhal on Monday next after twelfth day, and bring with them the indentures and verdicts, leaving the inquests at home, eschewing the jeopardy and peril that has grown by the coming of the multitude of the inquests to the Hall in times past." See *Report from the Secondaries and City Courts Committee, 31st Oct., 1860*. The wardmotes continued to meet till 1857.

peculiarly urban items, such as those dealing with precautions against fire, prohibitions of pig-keeping, regulations respecting stalls and lean-to sheds. Secondly, it will be noted that the jurors do not make their presentments on the day of the court, but on a subsequent day named by the alderman. Finally, it may be remarked that in both these respects the London ward-motes present a striking parallel to the Southampton court leet.

§13.—The Articles of the Leet in the Early Tudor Group of Printed Guides.

The Early Tudor Group of printed guides—that is, all anterior to Kitchin's treatise—are, as I have already observed, essentially mediæval in their character. Hence for purposes of comparison with the preceding lists of articles I give in Appendix V. at the end of this volume a summary of the list given in Wynkyn de Worde's edition of the *Modus Tenendi Curias* of date c. 1510. The other members of the group contain lists substantially identical.

CHAPTER V.—THE EVIDENCE OF THE ARTICLES.

§1.—The Scope of Mediæval Leet Jurisdiction.

Those who go to the trouble of making an analytical study of the eleven sets of articles summarised in the preceding chapter will find that, though the average number of items per set is but twenty-five, there are nevertheless some ninety separate matters of inquiry referred to in the lists taken as a whole. This means, of course, that together with a general similarity in character, there is an extraordinary diversity of detail. This diversity of detail is further accentuated by the fact that many of the articles are of the vaguest and widest reference, and yet again by the fact that one of the lists ends up with "et plures sunt articuli," that another concludes with "all other articles that may avail for the destruction of sin," that a third closes with an injunction to the presenters to inquire into "violations of crown rights generally," while still a fourth includes without limit in its final entry, "other complaints, pleas, and cases which have arisen."

Further, it will be found not only that mediæval leet jurisdiction is extremely nebulous as to its circumference, but also that it is uncertain even as to its centre. There is no single article to be discovered in all the eleven lists. The nearest approach to generality is seen in respect to two articles, viz. (1) the article concerning view of frankpledge, which is present in every list save that of the *Statutum Wallie*; and (2) the article concerning weights and measures, which is included in all save the *Articuli Intrandi* of 1269. As to the rest, *nine* lists contain references to the assizes of bread and ale, hue and cry, and bloodshed; *eight* to suit of court, diversion of water-courses, treasure trove, and purprestures; *seven* to felons, returned out-laws, and usurers; *six* to rape, coiners, removal of bounds, and waif; *five* to walls and ditches, harbouring of strangers, redubbers of old garments, repair of ways, and haunters of taverns; *four* to watch, repair of bridges, traitors, whiteners of leather, malefactors in parks, "hamsock," and withholding of the king's dues. There are six articles which appear in only *three* lists, twelve articles which appear in only *two*, and finally nearly forty which appear in only *one* out of the eleven. This remarkable diversity is in sharp and impressive contrast to the unbroken uniformity of the printed articles of the leet contained in court-keepers' guides of the Early Tudor period. These divergent mediæval lists show us, in short, the common-law jurisdiction of the leet in the making; the Early Tudor lists reveal to us the finished product.

§2.—Classification of Offences.

Though the articles as given in the lists themselves are in every case wholly unclassified,—are, indeed, enumerated almost indiscriminately,—yet whenever rules of procedure are added, one clear line of separation is evident. On the one hand are serious offences, condemnation for which usually involves loss of life or limb; such offences, in other words, as are broadly denoted by the expression "felonies at the common law." These include the crimes later removed by statute to a class apart as treasons (high and petty), together with murder, arson, burglary, robbery, and theft. Such offences are to be enquired into, if necessary, in secret; the accused person is to be arrested; an indictment, sealed with the seals of the jurors, is to be drawn up and sent to

the king's justices-in-eyre, who will conduct the trial.¹ On the other hand are minor offences which the local court can deal with fully, and with which it usually deals by way of amercement. Hovering between the two classes, we see, till towards the close of the thirteenth century (in the *Articuli Intradendi*, c. 1269, and *Britton*, c. 1290), the offence of the "hand-having and back-bearing thief." When the hue and cry has been called, and the culprit, damned by the booty which he carries, has been taken, he may be brought before the court and by its judgment hanged.²

§3.—Relation of View of Frankpledge to Sheriff's Tourn.

The distinction just noted between major and minor offences, obscured in the unclassified mediæval lists of articles, becomes clear in the later court-keepers' guides and in the charges to jurors based upon them. But, on the other hand, a distinction but rarely discernable in the modern treatises stands out bulky, though blurred, in the writings of the mediæval lawyers; I mean the distinction between view of frankpledge and sheriff's tourn. Fleta mentions the distinction; Britton emphasises it by giving the articles of the view separately from the articles of the tourn; the *Mirror* actually treats the two in different chapters. The lawyers are at a loss to explain what the essential distinction is; they seize upon unrealities, and their accounts of them conflict. But, all the same, there seems to be historical justification for their opinion. The view of frankpledge was at least as old as the time of Henry I.,³ and was probably a good deal older: twice a year the hundredman, or hundredreeve⁴ (whom we will call for the sake of ambiguity by the *Mirror's* name of "hundreder"), called a specially full hundred court, at which he saw that all the tythings were full.

¹ These rules accord with *Stat. Mag. Cart* (25 Ed. I.), cap. 17; *Stat. 13 Ed. I.*, c. 13; and *Stat. 1 Ed. III.*, c. 17. By *Stat. 1 Ed. IV.*, c. 2, the right to arrest was transferred from the sheriffs to the justices of the peace.

² We may suspect that this provision marks, not a concession, but an attempt to regularise a relic of self-help or "lynch law" which it had not been possible to suppress. But how many "hand-having and back-bearing thieves" would be caught just at the psychological moments when the six-monthly tourns were being held? Cf. Pollock and Maitland *Hist. Eng. Law*, II., 579.

³ *Leges Henrici Primi*, vii.: "Speciall tamen plenitudine, si opus est, bis in anno convenient in hundredum suum quicumque liberi . . . ad dinoscendum scilicet inter cetera si decaniam plenè sint," etc. Stubbs *Select Charters*, p. 105.

⁴ On the vexed question of the presidency of the hundred court see Stubbs *Const. Hist. Eng.*, Vol. I., pp. 112-114. Is it possible, however, that even in Henry I.'s time the sheriff took the half-yearly view? Dr. Gneist thinks that he did: see *Const. Hist. of England* (Ashworth's edition, 1891), pp. 145 and 152. I am strongly disposed to follow him, and so to minimise the revolutionary effect of the Assize of Clarendon. However, in the text I follow what I take to be the view of Dr. Stubbs and Professor Maitland. The evidence does not seem to warrant a positive statement one way or the other.

The sheriff's tourn, on the other hand, owed its origin to Henry II.'s *Assize of Clarendon*, 1166.¹ By this great administrative instrument Henry II. sought to knit together the various parts of the judicial system of the country; to bring under the control of the strong central government, which had been established by the Normans, the local courts, which remained as valuable relics of the older Anglo-Saxon polity. Hence, just as to all the shire courts throughout the kingdom he began to send periodically his justices-in-eyre, so, throughout each shire, to those half-yearly great hundred-courts at which the view of frankpledge was taken, did he begin to send his sheriff-on-tourn. Further, to render the circuits of the justices to the shires, and the tourns of the sheriffs to the hundreds, effective, the king ordained that "in every county and in every hundred inquiry shall be made by twelve of the most lawful men of the hundred and by four of the most lawful men of every township concerning robbers, murderers, and thieves and the receivers of such;"² in other words, he introduced the jury system of presentment in respect of three classes of great offenders. What, then, do we behold as the result of the *Assize of Clarendon*? We see at the half-yearly court the "hundreder" and the chief pledges still present, but thrust into the background, and in the foreground, brought in by Henry as protagonists, the sheriff and the jury. Now, how did these four arrange their parts? That is the problem. I can only venture to suggest, for the consideration of constitutional historians, an answer. As to (a) the "hundreder," he seems to have become a mere official—chief constable, or beadle—whose chief duty was to convene the court.³ As to (b) the sheriff; he became the dominant official, conducting all the business of the court, and, in fact, constituting the court. As to (c) the chief pledges: here is the crux. What had they done under the old system? Had their role been merely passive? had they simply been viewed? It is incredible. Had they made presentments? Probably, in the strict sense of the expression, they had not. Their duty would seem to have been the negative duty *not* to conceal offences when they were asked about them, rather than the positive duty of inquiring into and

¹ Maitland *Select Pleas*, p. xxxi.

² *Assisa de Clarenduna*, §§ 1 and 9 (Stubbs *Select Charters*, p. 143).

³ Stubbs *Const. Hist.*, Vol. I., p. 114; and *The Mirror of Justices*, p. 39. Of course if, as Dr. Gneist thinks, the sheriff, even in Henry I.'s reign, took the half-yearly view of frankpledge in the hundred courts, then the "hundreder," even then must have been a mere official.

presenting offences of their own mere motion.¹ It was for them severally to answer questions—as Fleta says, “ad hæc capitula distincte respondere”—it was enough if they did not mumble, or tell lies. May we not suppose that the “capitula” given by Fleta and Britton substantially embody the subjects concerning which the “hundreder” used to question the chief pledges twice a year in Henry I.’s time, as the sheriff did in Edward I.’s? If so, some of the questions asked were big questions: “Do you know of any robbers, murderers, or thieves?” They were questions too big for a “hundreder” to ask with effect. To answer them was in turbulent times dangerous, involving a risk too great for a chief pledge to run. Hence the *Assize of Clarendon*, introducing a stronger official (with the military forces of the shire at his command) and a jury of freemen, not so easy to terrorise as an individual chief pledge, who would commonly be a serf.² With the sheriff and the jury behind them, the chief pledges might feel new courage in the face of rogues, and new fear in the presence of the law. Thus we see from Fleta, from Britton, and from the *Modus tenendi Curias* of c. 1340, that the questions continued to be asked of them. But the jury listened to their answers, reviewed them, and, above all, inquired concerning suspected concealments. Consequently we are not surprised when we are told by Britton that in 1290 (*d*) the jurors have moved so far beyond the narrow sphere marked out for them in the *Assize of Clarendon* that, on the one hand, they have actually interposed themselves between the chief pledges and the sheriff, and are receiving the responses of the former to transmit them to the latter, and that, on the other hand, they are presenting not only robbers, murderers, and thieves, but offenders of all kinds.

§4.—Evolution of the Jury of Presentment.

If the view just stated be, even in its main outline, correct, we are able to mark the following stages in the evolution of the jury of presentment. First, in Norman and probably in Anglo-Saxon times, twice every year the “hundreder” assembled the chief pledges of his hundred, asked them if their tythings were

¹ See frankpledge oath, c. 1269, in *Maitland Court Baron*, p. 76, and compare *Leg. Ed. Conf.*, II., in Stubbs *Select Charters*, p. 77. Dr. Vinogradoff says: “Everybody was bound on entering the tithing to swear . . . that he would conceal nothing that might concern the peace,” *Villainage in England*, p. 364.

² As to the servile condition of the frankpledges, cf. Bracton, f. 134 b., and Pollock and Maitland *Hist. Eng. Law*, I., 568.

full, and further enquired of them concerning the good government of the hundred—asked a list of questions of each of them individually concerning his tything, and of all of them collectively respecting the hundred as a whole. The answers to these questions would be in practice scarcely distinguishable from the “presentments” of later times. But since the notification of an offence involved the production of the offender, and since the tythings in general and the chief pledges in particular were responsible for the ill-deeds of their members, the temptation to concealment was strong.¹

Secondly, Henry II., in 1166, introduced into the hundred court (1) the sheriff to take over from the “hundreder” both the view of frankpledge and the serious judicial business of the court, and also (2) the jury of “twelve of the most lawful men of the hundred” who, together with four local representatives, should make active search for notorious robbers, murderers, and thieves—which search would be largely an enquiry into the concealments of the chief pledges.

Thirdly, a struggle for dominance, if not for existence, began between the two institutions, viz., the ancient “view” of the hundreder and the new “tourn” of the sheriff, and between the two bodies, viz., the responding chief pledges and the presenting jurors. Fleta and the *Modus tenendi Curias*, of c. 1340, show us the struggle still going on. According to their accounts the chief pledges respond and the jurors present, each group directly and separately, to the sheriff. But the jurors are distinctly in the ascendant; they review the responses of the chief pledges, and their own presentments cover the whole sphere of the jurisdiction of the court, and not merely the three crimes of robbery, murder and theft. Britton depicts a later stage of evolution, viz., that of the jurors victorious. The chief pledges respond to the jurors and not to the sheriff directly; they are, indeed, become mere police officials, village constables.

But we need not suppose that the jurors thus triumphed over the chief pledges everywhere. We should, on the contrary, be surprised to find uniformity of development in mediæval institutions. The jury system would, it is true, almost inevitably triumph in manors and small townships, where there would be only one or two chief pledges; the requirement of Edward I.² that all

¹ On this point *Leg. Ed. Conf.* xx., finds a most suggestive parallel in *Fleta*, p. 114: “Cum autem . . . convertant,” quoted above at the end of Chap. IV., § 5 (p. 52). Cf. also *Braeton*, f. 124: “De eo autem qui fugam cepit, diligenter inquirendum si fuerit in francplegio et decenna, tunc erit decenna in misericordia coram iusticiariis nostris, quia non habent ipsum malefactorem ad rectum.”

² Stat. West. II. (13 Ed. I.), cap. 13.

inquests in serious cases should be taken by twelve lawful men who should set their seals to the indictments, would almost inevitably lead to the impanelling of jurors and to the gradual reduction of the one or more chief pledges, headboroughs, borsholders, or tything men to the condition of mere official subordinates¹; the jurors would extend their inquests from grave offences to minor matters where there had originally been no need for presentments to be made by twelve or any other precise number of men, the chief pledges would cease to do more than report offenders to them and execute their judgments.² But in big towns and extensive franchises the process may well have been very different. In them, large and powerful bodies of chief pledges would render unnecessary and even impossible the impanelling of any alien supervisory body of jurors; they could and would supply the twelve lawful men required by the *Assize of Clarendon* and the *Statute of Westminster* for the indictment of felons.³ Norwich,⁴ Yarmouth,⁵ and Leicester⁶ furnish indisputable cases in point, while Lynn seems to supply a fourth, for its leet jury used to consist of twenty headboroughs, two from each of the ten wards of the town.⁷ If this were so, however,—that is, if the capital pledges developed into jurors—would not a jury which was based upon and evolved out of the frankpledge system, show relics of its origin, and thus differ in some marked way from a jury which, originating in the *Assize of Clarendon*, first supervised and then superseded the chief-pledges, reducing them to the rank of mere subordinate officials? I think that it would, and that in fact it did, and even yet does. For I

1 The names of some of the officers mentioned in the second part of this essay will be found to be suggestive, e.g. the "tythingmen" at Basingstoke, the "decliners" at Boston, the "borsholder" at Canterbury, the "borsholders and presenters" at Faversham. All these names are taken from the *Municipal Corporations Report* of 1835. Note moreover from Dalton's *County Justice* (A.D. 1618), p. 324: "There be other officers of much like authority to our constables, as the borsholders in Kent, the thirdborow in Warwickshire, and the tythingman, or burrowhead, or headburrow, or chief pledge in other places." Cf. to similar effect Sir H. Finch *Law* (A.D. 1636) p. 336. Further, a proclamation of Charles II. given in the *London Gazette* for 1678 (No. 1357/1) runs: "His Majesty doth hereby strictly charge all constables, churchwardens, headboroughs, tythingmen, borsholders, and other parish officers." Finally, Blackstone in 1768 said, "The ancient headboroughs, tythingmen, and borsholders were made use of to serve as petty constables." *Commentaries*, Vol. I., p. 356.

2 In the Abbes of Romey's Court in 1262 (that is before the passing of the Stat. West. II.) "the tithingmen come up one by one to make presentments as to what has happened in their respective (territorial) tithings": they present direct to the steward and there is no jury (Maitland *Select Pleas*, p. 177). In the Abbot of Battle's court in 1290 (that is even after the passing of the Stat. West. II.) at the views of frankpledge the presentments are said to be made by the tythingman with his tithing: "all the presentments given are of minor offences (Maitland *Select Pleas*, p. 162).

3 Cf. the case of the Bishop of Ely's court at Littleport, 1285—1327: Maitland *Court Baron*, p. 110.

4 Cf. Hudson *Leet Jurisdiction in Norwich*, p. xxvii. The Leet roll of 1238 begins "Cap. pleg. (then follow twelve names) presentant per sacramentum suum."

5 Cf. Merewether and Stephen *Hist. of Boroughs*, pp. 754-59.

6 Cf. Bateson *Records of the Borough of Leicester*, Vol. II., pp. 175, 178, 180, 182-4.

7 *Mun. Corp. Report* (1835) IV., 2401.

venture to suggest that we see a jury which has developed from a group of chief pledges in some, if not all, of the following cases; first, when the jurors, like those of the still existent Savoy leet, do not lay down their offices at the close of the court day, but keep them for a year; secondly, when the jurors, like those of Southampton, do not merely, sitting in a row, receive and make presentments, but go round, beating bounds, examining weights and measures, surveying highways, inspecting nuisances, and (above all) forcibly resisting encroachments and redressing wrongs; thirdly, when presentments on matters other than felonies are, as at Leicester, made from time to time by less than twelve presenters.¹

But, be this as it may, we are wandering beyond the bounds of legal theory into the region of historic fact. For this at least is clear: the "twelve men," or leet jurors, described in the lawyers' treatises and court keepers' guides, are absolutely free from any tie of relationship with the frankpledge system. They are (as we shall see more fully in the next section) appointed but for one day, the passing stranger may be enrolled among them, they do not stir beyond the confines of the meeting place, they merely receive and make presentments, in every case the agreement of twelve is required to give validity to a verdict; they are in fact not only separate from, but even hostile to the chief pledges, whose work they are intended to supervise, and whom they supersede.²

¹ At Leicester in 1380: "Franciplegii quorum nomina sunt appensa [a sllp containing six names stitched on] presentant super sacramentum suum quod Emma serviens R. W. iuste levavit hutesium de R. B. . . . et J. R. iniuste traxit sanguinem cum baculo de predicta Emma." So again in 1443 an affray made by A. S. against R. S. was presented by four frankpledges only. Bateson's *Records of Leicester*, Vol. II., pp. 175 and 254. Cf. also Maitland *Select Pleas*, pp. xxxiv.-vi.

² This suggested double origin of the leet jury may have been the source of much of the late uncertainty concerning the powers of the jurors, and therefore the cause of much litigation. For example, "the case of *Moore v. Wickers* has been looked upon as an authority against the validity of a custom for the jury of a leet to enter into shops for examining weights and measures, and to destroy any such that might be found to be deficient" (Scriven *Copyhold* [3rd Ed.] Vol. II. p. 870). The lawyers tried to lay down one general rule in such cases; but may we not say that, if the jurors in question—those of Stepney—were successors of the mediæval chief-pledges, they *had* the right to search and destroy; but that, if they were merely the twelve men of the Assize of Clarendon and Statute of Westminster, they had *not*? If this be the correct view, the issue was really one of fact rather than one of law. The same may be said of the apparently conflicting case of *Wilcock v. Windsor*, in which the defendant, Windsor, bailiff of the prescriptive court leet held for the manor of Clerkenwell, was supported by the King's Bench when he was accused of trespass in entering the plaintiff's house and "breaking, bruising, perforating, and destroying divers pots of the plaintiff there found."

Section III.—The Court Leet in the Modern Authorities.

CHAPTER VI.—THE OLD AND THE NEW: A CONTRAST.

§1.—The Old.

The mediæval authorities to which in the last section we paid attention are, it will have been noted, of the most diverse description. One is a statute; another is a document of uncertain origin which has intruded itself into the statute book; a third is a set of regulations drawn up for the city of London; the remainder, of which no two are alike, seem to have been intended variously as guides to legal practitioners, or to sheriffs, or to the stewards of franchises, or to the bailiffs of manors. Moreover, the authorities differ, not only in nature and in form, but also in weight. At the one extreme is the *Statutum Wallie*, an enactment of the sovereign legislature which, within the sphere of its application, is an original source of law; at the other extreme are venerable memoranda concerning which we know nothing except that they have survived the chances and changes of six centuries. But not even there does the diversity end. It has further been seen that no two convey the same message, or give the same answer to our questions. Nevertheless, this very diversity, although it prevents us from making those *positive* generalisations after which the soul of the historical student ardently longs, enables us to arrive at some *negative* generalisations which are by no means devoid of interest and value. We are able to say with some confidence—as I hope I have made clear—first, that the term “leet” during the later middle ages connoted *not* so much a court as a jurisdiction—a collection of minor rights claimed by the king as *regalia* and delegated as *privilegia*, rather than a piece of judicial machinery; secondly, that this “leet” jurisdiction was *not* peculiarly

manorial, but could be and was appendant to various courts of very diverse functions and powers,—that it could be and was exercised by sheriffs in their tourns, by aldermen in their ward-motes, by bailiffs in the courts of great franchises, as well as by stewards in the halmotes of lowly manors; thirdly, that the sphere of leet jurisdiction was *not* clearly defined, so that only very gradually did it become on the one side distinct from the sphere of the higher criminal jurisdiction of the king's justices, and on the other side from the sphere of the petty civil jurisdiction which belonged by inherent personal or territorial right to the community of a hundred, the corporation of a borough, or the lord of a manor; fourthly, that its content was *not* determined, so that even when, by Magna Carta on the one hand and by *quo warranto* inquests on the other, the fundamental distinctions of sphere were made evident, there yet remained—and remained, in all probability, until the arrival of that greatest of all unifiers, standardisers, and levellers, the printing press—a bewildering uncertainty as to the exact composition of that group of rights which, as appurtenant to the view of frankpledge, constituted the leet; fifthly, that the process of presentment, universally associated with the leet, was *not* of simple and single origin, but was evolved by a combination and fusion of the immemorial *responsa franciplegiorum* concerning all matters great and small, with the *inquisitiones juratorum* instituted by Henry II. in respect of robbery, murder, and theft; sixthly, and finally, that similarly the leet jury was *not* of undivided source, but that in some cases (mainly in boroughs and large franchises) it could trace its ancestry to the group of chief pledges of the old system of mutual guarantee, while in other cases (mainly in manors) it could claim to have established itself on the ruins of that system, and could trace its descent from the twelve lawful men who, first impanelled to supervise the chief pledges, ended by reducing them to the rank of village constables.

§2.—The New.

The modern authorities, to the study of which we now address ourselves, differ in a very marked degree from those of the earlier period. Instead of a diversity so great that it might be expressed by the phrase *quot articuli tot sententie*, they present a conformity to type which manifest but little variation. In the very earliest group of printed guides we see evidence that the work of legislators and lawyers, begun some three centuries

before, is in the rough finished—that leet jurisdiction has become standardised. We further see, if we look more closely into detail, first, that the leet has fully established itself as a court rather than a collection of rights, which means that a legal fiction, industriously asserted by advocates and judges generation after generation,¹ has come to be accepted as historic fact; secondly, that the leet is discussed and described as though it were exclusively a *manorial* court, to the ignoring of the courts of honours, franchises, cities, and boroughs, which possess and exercise the same jurisdiction; thirdly, that the sphere of this manorial court leet is sharply differentiated from the spheres both of the criminal courts of quarter sessions, assizes, and king's bench above, and from the spheres of the civil court baron and court customary below; fourthly, that the articles of the leet are, as a consequence, substantially fixed, agreed upon, and determined, so that from one century to another, and in writer after writer,² there is variation only in comparatively unimportant detail; fifthly, that presentments in all matters, great or small, are always made by twelve jurors; and, finally, that the jurors are regarded as wholly free from connection with the chief pledges, headboroughs, tythingmen, or constables, except in so far as they appoint them, supervise them, receive informations from them, and punish them for concealments and other delinquencies.

The fact that the modern authorities conform so closely to a type makes it unnecessary (as their number makes it impossible) to pursue the method of individual treatment followed in the case of the scanty and diverse mediæval authorities. I propose, therefore, in this section to adopt a topical arrangement of chapters, and to summarise under appropriate heads the principal matters dealt with in the court keepers' guides and other legal treatises of the sixteenth and following centuries. With respect to the references, it would be tiresome to quote in support of each statement a dozen or more authors, all of whom say substantially the same thing. Therefore, except when there is divergence of view, or where it seems desirable to strengthen a doubtful opinion, I shall refer only to Kitchin's *Jurisdictions* (4th Edition) and Sheppard's *Court Keepers' Guide* (4th Edition).

¹ See the *Year Books*, beginning from 21-22 Ed. I. (1293), when a man escaped punishment for an encroachment because "yl ne dut respundre a curt de baron de purpresture presente a la lettre ky est plus aut court."

² Archaeologists, like Ritson, always excepted.

These two I select mainly because, through the kindness of the respective librarians of Peterhouse, Cambridge, and the Hartley University College, Southampton, I am able to have them continually before me as I write. The others I have had to consult at the British Museum and other libraries, which I am not able to visit frequently.

CHAPTER VII.—COURT LEET, COURT BARON, AND COURT CUSTOMARY.

§1.—The Origin and Purpose of the Court Leet.

A great deal of learning of the pre-historic type was wasted by the Tudor and Stuart lawyers in discussing the origin and original purpose of the court leet. We need not stop to examine the speculations of this antique scholarship in detail, but they must not be wholly ignored; for they serve to show how far, under favourable conditions, legal imagination can travel from the region of historic fact. They are the speculations of men to whom civil society and organized government are not natural growths, but deliberate contrivances, due either to divine ordinance or to conscious human invention. Hence they treat the court leet as rising, a fully-developed judicial institution, from the brain of Alfred the Great or some other remote king; and as having been designed by its creator as a means to some clearly conceived and well-defined end. Kitchin and Sheppard, for example, agree that in the beginning the king judged the whole kingdom personally, until the burden became too great; that he then divided up the kingdom into shires, and appointed sheriffs to act as his delegates; and that, finally, the task of ruling the shires having grown to be too heavy, they in turn were split up into hundreds, within which leet jurisdiction was set up.¹ A song more entirely out of harmony with that sung by Clio on this theme could hardly be composed. Then, again, the lawyers' view of the original purpose of the court is no nearer to fact. Nor, indeed, could it be, for it is a fundamental error to assume that there was any formulable original purpose at all, or to suppose that the existence of the

¹ Kitchin *Jurisdictions*, p. 6, and Sheppard *Court Keepers' Guide*, pp. 32-3.

court was in any way due to conscious institution. Kitchen considers that "these courts leet were ordained" to determine the number of the people, to secure good government and manners, to exact the oath of allegiance, and to maintain peace and obedience.¹ Sheppard and other writers somewhat vary the strain, but the motive is the same, viz., "ordination"—deliberate contrivance of means to end—and it is a motive wholly discordant with the truth.

§2.—The various Manorial Courts distinguished.

Another matter which bulks largely in the modern legal treatises on manorial jurisdiction is the differentiation, first, of the court leet from the so-called court baron, and, secondly, of the court baron from the so-called court customary. In fully-matured theory the court leet is a petty police and criminal court, held by the lord from the king, either in virtue of specific grant or by prescription, and exercising royal rights of jurisdiction over all resiants; the court baron is the lord's court for the freehold tenants, having jurisdiction in all kinds of personal actions where the cause of action does not exceed forty shillings in value, and, further, having power to deal with disputes concerning the title of freehold lands;² the court customary is the lord's court for the unfree tenants, having for its main business the conveyancing incident to that venerable relic of villinage, copyhold tenure.³ The distinction drawn between court leet and court baron is much more radical than that between court baron and court customary: it marks, indeed, the logical completion of that process of differentiation of royal from territorial and personal jurisdiction which, effectively begun in Edward I.'s time, has been vigorously maintained by the crown lawyers ever since. But, though radical in legal theory, it is a distinction which has, as we have already seen, but little justification in history, and one which, as we shall presently see, has but scanty recognition in contemporary practice. The other distinction, viz., that between court baron and court customary, is one of which little trace can be found

¹ Kitchen *Jurisdictions*, p. 6.

² Sheppard *Court Keepers' Guide*, p. 87. In practice, however, actions for the recovery of freehold lands, even if begun in the manorial court, have been almost invariably, from Henry II.'s time, removed by writ either to the county court or to the king's court.

³ For excellent accounts—the one legal, the other historical—of these three courts, see (1) Elton and Mackay *Copyhold* (2nd Ed., 1893), in which the court baron is dealt with, pp. 300-1, the court leet, pp. 301-2, and the court customary, pp. 303-4; (2) Holdsworth *History of English Law* (1903), Vol. I., pp. 61-72.

in writings of earlier date than the seventeenth century. In *Kitchin* it is wholly wanting; even in *Sheppard* it is present only by implication;¹ in Coke's *Institutes*, however, it is more explicitly recognised, though even there the statement does not go further than that the manorial court is "of *two natures*, the first . . . a court baron . . . and . . . the second . . . a customary court."² Here again the distinction is one of legal theory only.

But legal theory shows itself capable of even more heroic analysis, and yet completer defiance of both historic evidence and contemporary reality. It manifests its supreme effort in Fisher's *Practical Treatise on Copyhold Tenure* (1794), in which are distinguished no less than five courts, viz., court leet, view of frankpledge, court baron, court customary, and court of survey. Need it be repeated that, as a matter of fact, it is hard enough in most court rolls to perceive even the prime distinction between court leet and court baron; and that probably not the acutest eye could in any court rolls detect a division corresponding to the lawyers' differentiation between court baron, court customary, and court of survey. There undoubtedly were differences of *function* in the court of the manor; there were various classes of business, there were diverse grades of suitors. But difference of function is not separation of essence, and in pushing their distinctions beyond the realms of doing into the realms of being, lawyers like Fisher were leaving the *terra firma* of jurisprudence—the region of things as they are—and embarking on the trackless sea of the theory of legislation—the limitless expanse of things as one thinks they ought to be. As a rule there was, in fact, in the manor a single undifferentiated court which, when it was dealing on behalf of the king with minor criminal cases, performed the functions of a court leet; when it was administering the oath of allegiance, could be regarded as a view of frankpledge; when it was treating of freeholds, took the shape of a court baron; and when it was conveying copyholds, transformed itself imperceptibly into the likeness of a court customary. Whatever differences there may have been as to times of meeting, order of procedure, or constitution, they were not differences of essence, nor yet differences of form radical enough to split up the one court into several. But, for all that, some functions, as we shall see in detail later on,

¹ Sheppard's section "Of a Court Baron" (pp. 66-96) is followed by one "Of Copyholds" (pp. 97-181), but the term "court customary" does not occur in it.

² *Coke 1st Institute*, p. 68.

frequently persisted longer than others; in particular, in many cases, for generations after "baronial" and "customary" elements had wholly vanished away, the leet functions survived, leaving a court which had become by process of attrition a "court leet" pure and simple.

§3.—The Differentia of Court Leet and Court Baron.

Sheppard gives the seven following points of difference between the court leet and the court baron¹:—“(1) The court baron may be kept once every three weeks . . . but a court leet is not kept above twice a year; (2) court barons did originally belong to inferior lords of manors, but court leets did originally belong to the king; (3) the court baron is incident to every manor, . . . but . . . lords of manors cannot keep leets without a special prescription or a special patent for them; (4) in the court baron the suitors are judges, but in the leet the steward is judge; (5) in the court baron the jury may be of less than twelve, but in the court leet never; for in a court leet strangers may be impanelled of the jury, but not so in the court baron; (6) a court baron cannot continue without two suitors *ad minimum*, but a court leet may continue without any suitors; (7) the court baron doth not enquire of any offence against the state, but the leet doth enquire of all offences under high treason, and of some high treasons also, but as felonies.” Coke succeeds in discovering four other points of difference.² They are: (8) the court baron may be held at any place within the manor, but the court leet “by the statute of Magna Carta is to be kept *in certo loco ac determinato*”; (9) “a writ of error lyeth upon a judgment given in a court leete, but not in a court baron”; (10) “in a court leete a *capias* lyeth, but in a court baron instead of a *capias* is used an attachment by goods”; (11) “in a court baron an action of debt lyeth for the lord himself, because the suitors are judges, but in a court leet the lord cannot maintain any action for himself, because the steward is judge.”

¹ Sheppard *Court Keepers' Guide*, pp. 2-3.

² Coke *The Compleat Copyholder* (1650 edition), pp. 60-62.

CHAPTER VIII.—THE MANNER OF KEEPING THE COURT LEET.

§1.—General Scheme.

The modern legal treatises, and in particular the court keepers' guides, give full directions concerning the time when and the place where the court leet shall be held, respecting the announcement of its sessions, and regarding the ceremony proper to the opening of its proceedings. On these formal matters there is no serious divergence of opinion among the authorities.

§2.—Time of Meeting.

The periods and dates of the holding of the court are looked upon as fixed by one or other of three determinants, in the following order of precedence: first, royal grant; secondly, prescription; thirdly, the statute of Magna Carta.¹ Royal grant could, as a matter of fact, in very few cases be pleaded, either as a warrant for holding the court at all or as the regulator of its sessions. One may surmise, indeed, that it is placed in the fore-front by the lawyers, not because of its practical importance, but because its inclusion is required by their theory that the court leet is the king's court exercising royal jurisdiction. Prescription, on the other hand, was, as we shall see in the historical portion of our enquiry, very frequently the determinant. It had become prominent as a general plea of right during the *quo warranto* proceedings of Edward I.'s reign, when it had been defined as connoting unbroken usage from the beginning of Richard I.'s reign (1189).² But in the absence of determination by express royal grant or by prescription, the statute of Magna Carta was the authority.³ The relevant

¹ Sheppard *Court Keepers' Guide*, p. 6.

² Statutes of Gloucester, 18 Ed. I., Stats. 2 and 3.

³ The Statute of Magna Carta is quoted by old legal writers, and is given in Ruffhead's edition of the statutes, as 9 Hen. III. (1225). It is, however, known to us only through an *inexpimus* of Edward I., and accordingly it is given in the modern editions of the Statutes of the Realm as 25 Ed. I. (1297). Clause 35, which is the clause bearing on the matter now in question, runs:—"Nullus comitatus de cetero teneatur nisi de mense in mensem, et ubi major terminus esse solebat, major sit. Nec aliquis vicecomes vel ballivus suus faciat turnum suum per hundredum nisi bis in anno, et non nisi in loco debito et consueto, videlicet semel post Pascha et iterum post festum Sancti Michaelis. Et visus de franco plegio tunc fiat ad illud terminum Sancti Michaelis sine occasione, ita scilicet quod quilibet habeat libertates suas quas habuit et habere consuevit tempore Henrici regis avi nostri, vel quas postea perquisivit. Fiat autem visus de franco plegio sic, videlicet, quod pax nostra teneatur et quod tethinga integra sit sicut esse consuevit, et quod vicecomes non querat occasiones, et quod contentus sit de eo quod vicecomes habere consuevit de visu suo faciendo tempore Henrici regis avi nostri." *Ol. Stubbs Select Charters*, p. 816, § 42.

provision of the great charter had spoken, it is true, only of the sheriff's tourn; but, as has been already explained and emphasised, the court leet was regarded as derived out of the tourn, as co-ordinate in jurisdiction with it, and as subject to all the regulations made for it. Hence, although the enactment merely says that "no sheriff or his deputy shall make his tourn through the hundred oftener than twice a year, once after Easter and once after Michaelmas," the rule is unhesitatingly applied by the lawyers to the municipal and manorial franchises. Thus Kitchin lays it down that "a leet by the statute shall be held but twice in a year, that is in the month of Michaelmas and in the month of Easter, by the intent of the *Statute of Mag. Chart., Cap. 35*," though he goes on to explain that as "Magna Charta is but common law it can be prescribed against."¹ One may be allowed to suppose, however, that Magna Carta merely fixed what was already a more or less generally recognised custom, and that accordingly the date at which a court leet should be held, and the period of its sessions, were usually determined by immemorial practice, regulated and stereotyped by the enactment. As to the hour of meeting, nothing is said, but it is assumed that it is early in the morning. In practice, during the days of the court's activity, eight o'clock seems to have been usual. Later on nine, ten, or even eleven o'clock became customary.

§3.—Place of Meeting.

The statute of Magna Carta, in a similar manner, required that the sheriff's tourn should be held "at the due and accustomed spot," and the sheriff who held it elsewhere was liable to be punished for his offence by indictment.² But, with regard to manorial leets, there was great freedom; all that was required was that they should be kept within the precincts of the area over which they had jurisdiction. "Leet," says Kitchin, "shall be held in any place within the precinct of the lordship where it pleaseth the lord."³

¹ Kitchin *Jurisdictions*, p. 90. In the case of *Lawson v. Hares*, however, Rhodes J. expressed the opinion that Magna Carta is to be understood of the leet of the tourn and not of other leets. But to the contrary, again, see *Daker's* case.

² Sheppard *Court Keepers' Guide*, p. 5.

³ Kitchin *Jurisdictions*, p. 90. The same privilege seems to have been accorded to the municipal leets. Thus we shall find that the Southampton court, during the period covered by its records, has been held at three wholly distinct places, viz., Cutthorn, the Guildhall, and the Audit House. It is noteworthy that in the earliest known reference to it, A.D. 1397, the court is spoken of as being held "apud le Cutthorn *vel alibi*."

§4.—Notice of Session.

Since the precise spot at which a leet should be held, though as a rule fixed by stable custom, was in theory left to be determined by the lord, and as the time was movable within limits, it is natural that some sort of notice should have been looked upon as essential. Personal summons was not, however, necessary; for every resiant was expected to come to the court.¹ Public proclamation in church or market place was all that was demanded. Fifteen days' notice was held up as the ideal; but six was regarded as adequate.² Yet even this could not be insisted on, for, admits Sheppard, "if it be lesse time it is sufficient in law."³ How much "lesse"? There lives no answer of reply.⁴

§5.—The Order of the Ceremony.

Most of the manuals give elaborate and precise rules concerning the procedure to be observed at the opening of the court on the arrival of the day and hour duly announced for its session. Kitchin's statement, which is typical, may be briefly summarised as follows. (1) First, the bailiff in a loud voice cries: "O Yes! O Yes! O Yes!" This three-fold "O Yes!" (Fr. *oyez*: hear ye) marks the court as the king's. There is but one "O Yes!" at the opening of the court baron. (2) Then the bailiff, continuing, proclaims: "All manner of persons which are resident or deciners⁵ and do owe suit royal to this leet come in and make your suit and answer to your names everyone upon pain and peril which shall ensue." (3) Next the rolls of names are called, and persons who fail to answer to their names are amerced. The court is now in being, and (4) the bailiff once again utters his threefold "O Yes!" and then (5) calls for the essoins (Fr. *essoine*; Lat. *exonero*), or excuses of those who wish to be

¹ "There may be a presentment for a nuisance, etc., within the leet without notice given to the offender of the presentment; for all resiants shall be supposed present." Coynns, *Digest*, s. v. *Leet*. Cf. case of *George v. Lawley*. For efforts to establish exceptions to this rule, see Viner's *Abridgment*, p. 596. In the case of *Brook v. Hustler* it was held that, though in an ancient leet personal notice is not necessary, yet "if it be not an ancient leet personal notice is said to be necessary."

² Kitchin *Jurisdictions*, p. 11.

³ Sheppard *Court Keepers' Guide*, p. 25.

⁴ Scriven considers that "in the absence of an established usage three or four days' notice would seem to be sufficient" (*Copyhold* II., 822, n.). For a case of 40/- fines for failure to give due notice, see *Southampton Court Leet Records*, Vol. I., p. 585 (A.D. 1623).

⁵ *Deciners* (otherwise decenniers, dosluers, dozelniers, decennarii) were originally the capital pledges or tithingmen of the frankpledge system; then the term came to be applied to anyone in frankpledge; here it would seem to connote merely those persons of twelve years of age and over from whom the oath of allegiance was to be exacted. Cf. Cowell's *Interpreter*, s. v. *Deciners*, and *New English Dictionary*, Vol. III., p. 91.

exempted from attendance at the court. "If any man will be essoined," he cries, "come you in and you shall be heard."¹ The essoins are entered on the court-roll.² (6) That done, the jury—of which more anon—is impanelled, and an oath, after the following style, administered by the steward: "You shall enquire and faithfully make presentment of all things which I shall give you in charge, your companions' counsel, the king's, and your own you shall keep, and you ought to present the truth and nothing but the truth; so help you God." First the foreman swears to observe these injunctions, then the other jurors in batches of three or four. (7) This business concluded, the jurors settle themselves down to listen to a long and solemn discourse from the steward. It consists of two parts, the one an "exhortation" heavy with pious generalities, the other a "charge" full of minute directions concerning the work of enquiry and presentment. The "exhortation" bids them "fear God and keep His commandment"; urges them to "remember *Jeremiah, Chapter IV.*" and other passages of Scripture relating to the telling of lies; advises them not to be unmindful of the fate of Ananias and Sapphira, and ends by assuring them, though it does not give any reference to its authority for the assertion, that they "are chosen in such manner as the angels of God are at the last day of judgment of man," and implies that they should strive to live up to the method of their election. One would surmise that all the forces of earth and heaven combined are none too many or too powerful to keep those ideal jurors to the truth. The "charge" then defines the jurisdiction of the court. (8) At the close of the charge the bailiff relieves himself of another threefold "O Yes!" It is difficult to see why. Perhaps it may be merely permitted to him as a graceful concession to his feelings; or perhaps it may at this stage connote not so much "listen" as "awake," and be addressed jointly and severally to the jurors, who are to be pardoned if they have mistaken the "exhortation" for a sermon. (9) The steward then makes an announcement to the whole assembly: "If any man can inform the steward or the jury of any petty treason, felony, petty larceny, annoyances, or bloodshed, pound-broken, or of rescues, or of any other thing made against the peace, or of any

¹ In mediæval times five common essoins, or valid excuses for non-attendance, had been recognised. They were known as (a) *ultra mare*, (b) *de terra sancta*, (c) *de malo veniendi*, (d) *de malo lecti*, (e) *de servitio regis*. They are dealt with fully by Glanvill, Bracton, Britton, Fleta, etc. Cf. also Cowell's *Interpreter* and Pollock and Maitland's *History of English Law*, Vol. I., p. 562.

² Cf. *Southampton Court Leet Records* for A D. 1617, 1618, 1619, 1620.

person of common ill-behaviour within the leet, or any workman using common deceit, or of any common misdemeanour of any officer or other person there, or of any waif, estrey, treasure found, or of any other thing here enquirable, come you in and you shall be heard." If any come in response to this appeal, they are sworn to give evidence to the jury, and their evidence is taken. (10) Last of all the steward turns once more to the jurors and says: "Go together and enquire ye of the matter of your charge and when you are agreed I shall be ready to take your verdict"; and to the suitors: "All manner of persons that have further to do at this court may depart at this time and appear here again at two of the clock in the afternoon."¹

We will take advantage of this welcome interval to enquire, on our part, who are these jurors, and who these suitors?

CHAPTER IX.—SUITORS, JURORS, AND OFFICERS OF THE COURT LEET.

§1.—Introductory.

Concerning what may be called the *personnel* of the court the writers of the manuals have a good deal to say, and what they say merits attention because it throws valuable light upon the history of the origin, development, and definition of leet jurisdiction in England. They discuss the questions: What is the nature of suit to the court leet and upon whom does the burden of suit rest? How is the jury appointed and what are its duties and its powers? Who are the officers elected by the court and what functions are they expected to discharge?

§2.—The Suitors.

The sixteenth and seventeenth century lawyers, with their passion for classification, drew distinctions between five different kinds of suit. These were, first, *suit in law*, which they subdivided into branches corresponding to real and personal actions; secondly, *suit of court* or *suit service*, dependant on tenure, such as that which required freeholders to attend the court baron;

¹ Sheppard *Court Keepers' Guide*, p. 61.

thirdly, *suit covenant*, based on agreement; fourthly, *suit custom*, arising out of immemorial practice; and finally, "when men come to the sheriff's turn or leet," *suit real* or *regal*.¹ This last kind of suit Kitchin explains as that "due by reason of the body," *i.e.*, because "the body is resident within the precincts and not by reason of freehold," adding that *suit real* "is due at the courts royal, . . . as at leets and wapontakes [*i.e.* sheriff's tourns], which are the courts of the king or queen."² Thus we see that, in the opinion of the lawyers, suit at leet is regarded as not at all feudal or manorial in its origin or nature, as not at all dependant on freehold, copyhold, or any other kind of tenure, but as arising out of the direct personal relation in which each subject stands to the king; so that it is due to the lord of the leet, not *qua* lord, but as the representative of his sovereign, as a royal official akin to the sheriff. Viner gives a clear expression to this view when he says: "A leet is a king's court to which every liege subject is to come and perform his allegiance to him."³ Hence the general principle which one finds repeatedly emphasised in the guides: "Everyone is in some leet, and no one is in two leets."⁴ Suit to the leet is, then, in legal theory, due from every resiant, and originally, at any rate in principle, "all persons of whatever rank in life, both men and women, servants as well as masters, from the age of twelve to sixty years, were compellable to attend."⁵

But to this rigid rule exceptions are, and must always have been, allowed. (a) Does not the very recognition of an age limit mark the oldest and most important of these? (b) Scriven himself admits that clergy having *curam animarum* were exempt.⁶ (c) Tenants in ancient demesne seem always to have claimed to be excused.⁷ (d) Chief pledges seem commonly to have been

1 Cf. Cowell *Interpreter*, s. v. *Suit*.

2 Kitchin *Jurisdictions*, pp. 295-6. Cf. *Year Book*, 21-22 Ed. I. (p. 390): "Presence a vowe de franc pledge demande par le reeson de la persone, non de la tenure." An important case relating to suit in leet and tourn is the *Windsor Case* given in *Year Book*, 17 Hen. VI. (1439).

3 Viner's *Abridgment*, s. v. *Court Leet*.

4 E.g. Kitchin *Jurisdictions*, p. 67. Cf. cases of *Cook v. Stubbs*, and *R. v. Routledge*.

5 Scriven *Copyhold* (3rd Ed.) p. 825. Scroggs, C. J., in his *Practice of Courts Leet* (4th Ed.) p. 18, gives 16 as the lower limit. The matter had ceased to be important in his day—the beginning of the eighteenth century. Perhaps he was thinking of the age at which the practice of archery had been accustomed to commence.

6 Scriven, *loc. cit.*

7 Viner *Abridgment*, s. v. *Ancient Demesne*, says: "Tenants of ancient demesne shall be exempt from the leet, view of frankpledge, and from sheriff's tourn." Ancient demesne consisted of manors which had belonged to the crown "on the day when King Edward was alive and dead," *i.e.*, in 1066, immediately prior to the Norman Conquest. The tenants of these old royal manors formed a special privileged class of "villain socmen"—personally free, but holding in villainage. They retained their privileges even when the manors were granted to private lords. Cf. Vinogradoff *The Growth of the Manor*, p. 364, and *Villainage in England*, pp. 89-93; also Hone *The Manor*, pp. 101-3.

regarded as representative of their tithings.¹ (e) Similarly, in other cases the reeve and four best men appear to have attended the sheriff's tourn on behalf of, and instead of, the whole of the resiants of their vill.² (f) But all agree that the greatest breach in the universality of suit to leet was made, or recognised, by the *Statute of Marlborough*, 1267 (52 Hen. III., cap. 10), which runs: "Concerning the tourn of the sheriff, it is provided that no archbishops, bishops, abbots, priors, earls, barons, nor any religious men, nor any women shall be required to attend, unless their presence is specially demanded for some specific cause."³ This statutory regulation made concerning the tourn was applied *a fortiori* to the manorial leets,⁴ and the simultaneous withdrawal (specific summons apart) of so many important persons or classes of persons from attendance at the courts must be regarded as marking a distinct and notable step in their downward career towards their present insignificance.

In one respect, however, the tourn and leet escaped a peril which worked rapid destruction to the courts baron and the ordinary three-weekly hundred courts. The *Statute of Merton*, 1236 (20 Hen. III., cap. 10) had "provided and granted that every freeman which oweth suit to the county, trything, hundred, and wapentake, or to the court of his lord may freely make his attorney to do those suits for him." But it is held by the lawyers that in tourn and leet "one cannot do suit by attorney, for the *Statute of Merton* does not extend to suit real."⁵ Each suitor is expected to come in person.⁶

¹ Maitland *Select Pleas in Manorial Courts*, pp. xxx-xxxi. Apparently the tithings made a payment to secure this privilege of representative attendance, thus admitting the principle of personal obligation. Professor Maitland (*loc. cit.*) speaks of a *capitulum* or sum of money paid by the frankpledges *ne vocentur per capita*, and quotes from the roll of the manor of Houghton a case in which "*capitales plegii et eorum decens nihil dant ad capitulum; ideo vocandi sunt omnes per capita.*" Ritsen considers that a somewhat mysterious payment known as "*certum letæ*," which is sometimes mentioned in court rolls, is really a payment to exempt all save chief pledges from attendance. Cf. Ritsen *Jurisdiction of Courts Leet* (1816), p. 120; but contrast Mordaunt *The Complete Steward* (1761), Vol. I., p. 37.

² Maitland, *loc. cit.*, and Pollock and Maitland *History of Eng. Law*, Vol. I., p. 547.

³ The text of this important enactment is as follows:—"De turnis vicecomitis provisum est ut necesse non habeant ibi venire archiepiscopi, episcopi, abbates, priores, comites, barones, nec aliqui viri religiosi, nec mulieres, nisi eorum presentia ob aliquam causam specialiter exigatur; sed teneantur turnus sicut temporibus predecessorum domini regis teneri consuevit. Et si qui in hundredis diversis habeant tenementa, non habeant necesse venire ad hujusmodi turnos nisi in ballivis ubi fuerint conversantes, et teneantur turni secundum formam Magne Carte regis et sicut temporibus regis Richardi et Johannis teneri consueverunt." This clause of the *Statute of Marlborough* was taken without change of a word from the so-called *Provisions of Westminster* of 1259 (see Stubbs *Select Charters*, p. 402). Its baronial origin is obvious.

⁴ Cf. Viner *Abridgment*, s.v. *Court Leet*: "Ecclesiastical persons are exempted by the Statute of Marlbridge from appearing at the sheriff's tourn, and consequently at leets which are derived out of tourns."

⁵ Coke *2nd Inst.*, p. 99, and Kitchin *Jurisdictions*, p. 147, and Scriven *Copyhold*, Vol. II., p. 826.

⁶ It may here be noted (1) that the case of *R. v. Adland* decided that "if a man hath a house within different leets, he shall be taken as conversant where his bed is"; (2) that the case of *Tott v. Ingram* showed that suit to a leet could not be released by the lord; (3) that a person amerced for absence from a leet in a place where he is *not* resiant has a remedy in the writ *pro exoneracione sectæ*.

§3.—The Jurors.

It has already been mentioned¹ that the jurors, as described in the modern legal treatises, are free from all visible connection with the frankpledge system. They are the descendants and representatives, not of the chief pledges, but of the "twelve men" of the *Assize of Clarendon* and the *Second Statute of Westminster*. They are the creatures of a day, not the officers of a year. They may be mere passing strangers rudely interrupted in a journey; need not be the permanent and responsible heads of the community.

(1) As to the *number* of the jurors, all the text-writers agree that the minimum limit for all classes of presentments is twelve. "A presentment in leet," says Kitchen, for example, "shall be by twelve, and not by fewer; otherwise every presentment there is traversable."² It is notable that the main, and in most cases the sole, authority quoted for this statement is the *Second Statute of Westminster* (1285),³ which contains the words: "It is ordained that sheriffs in their tourns and elsewhere when they have to enquire of malefactors by the king's precept or in virtue of their office shall cause their inquests of such malefactors to be taken by lawful men, and by twelve at the least, who shall put their seals to such inquests." It will be observed that this enactment applies primarily to sheriffs and their tourns; it is, however, extended to stewards and their private courts by the clause: "et sicut dictum est de vicecomite observetur de quolibet ballivo libertatis." Secondly, it will be remarked that the procedure defined relates solely to the presentment of "malefactors," *i.e.*, great offenders, such as the robbers, murderers, and thieves provided for by the *Assize of Clarendon*: this is made clear by the preamble, which runs: "Forasmuch as sheriffs frequently pretend that persons have been indicted before them in their tourns of thefts and other evil-deeds (*de furtis et aliis malefactis*), and take innocent men who have not been indicted in a lawful manner and imprison them and exact money from them," etc. There is nothing whatever to indicate that this regulation applies in the smallest degree to the presentment of those minor offences which are not the work of malefactors, but of persons merely uncivil, and which are punishable, not by imprisonment and ransom, but merely by a petty amercement.

¹ See above, p. 71.

² Kitchen *Jurisdiction*, p. 13.

³ 13 Ed. I., cap. 13. Kitchen refers also to statute 6 Hen. IV., fol. 2.

Further, I at present see no evidence which would authorise us to say either that the scope of this regulation was ever extended to include these minor offences, or that the presentment of such an offence by less than twelve was ever made invalid. Let us compare the terms of the statute with the words of Kitchin already quoted, viz. : "A presentment in leet shall be made by twelve and not by fewer, otherwise every presentment there is traversable." On the one hand, the statute says that in the case of great offenders not even a valid enquiry and indictment can be made by less than twelve. On the other hand, all that Kitchin asserts is that if a presentment is made by less than twelve, it is traversable. He makes no suggestion that a presentment made by less than twelve (say, by the village constable) is *ab initio* invalid; all he says is that such a presentment is not a verdict against which there can be no appeal. That is a very different thing. I come to the conclusion, therefore, that after the passing of the *Second Statute of Westminster*, no great offender could be so much as brought to trial on an accusation vouched for by less than twelve lawful men—a grand jury, in short; but that minor offenders could still be, and constantly were, presented by individual chief-pledges or constables, or by groups of two, three, or more of them, irrespective of numbers, with one important proviso, however, viz., that presentments made by twelve were verdicts, while those made by less than twelve were not. This view accords, I think, both with what we have seen revealed to us by Britton and Fleta, and also with what we see in the practice of the courts.¹ It became the universal custom in manorial courts for chief pledges or constables to make their presentments to twelve or more jurors, who, by accepting them and re-presenting them, turned them, in the case of grave offences, into valid indictments; in the case of petty offences, into binding verdicts.

All this relates to the *minimum* limit of the numbers of the jurors. Concerning the *maximum* limit, nothing authoritative is said: but Sheppard suggests that it is a good custom to summon twenty-four, and to choose somewhat less than the whole number.²

But whatever the number of the jurors a verdict agreed to by twelve is all that is required.

¹ Cf. case of *Duke of Bedford v. Alcock*, 1749, which decided that a presentment and amercement by six jurors is no bar to an appeal, and that the party aggrieved may have a replevin. The earlier case of *Cutler v. Creswick* illustrates the same point.

² *Sheppard Court Keepers' Guide*, p. 28.

(2) If the necessary twelve cannot be secured from among the suitors present, any passing stranger can be seized and forced to serve. If any of those summoned refuse to serve, they may be fined by the steward for contempt, for they are refusing service to their king.¹

(3) The duty of the jurors is defined as two-fold. They are first to examine and present cases laid before them by others, whether officers or private complainants; secondly, on their own account they are "to search about and that diligently" for offences against the common weal.²

(4) If a jury, having been sworn to present the articles of the leet, refuse to fulfil its duty or wilfully conceal offenders, each juror can be fined by the steward of the court for concealment and contempt.³ So, too, a fine can be levied on jurors who give a verdict before all are agreed, and on any who depart before the verdict is given.⁴ In a few special cases a more elaborate mode of procedure is provided by statute; e.g. in the matter of cross-bows and hand-guns, the use of which is restricted by a statute of Henry VIII. It is provided that if a steward suspect wilful concealment he may impanel a second jury of twelve or more to enquire into the conduct of the first, each of whose members, if found guilty, is liable to a penalty of 20/-⁵: a similar provision is made with regard to the preservation of the spawn and fry of fish by an act of Elizabeth.⁶

(5) In the much more serious case of false presentment, however, the law is light for the jury, though extremely harsh for its victim: "for a presentment in a leet duely made by a grand jury is said to be as gossell and no traverse lyeth to it, but in some special case, as when it doth concern freehold."⁷ Moreover, even in such special cases as those in which a second jury is impanelled to enquire into the doings of the first, "if the petit twelve make a false presentment, and this is found false by the grand inquest, yet the petit twelve shall not be amerced."⁸

1 Kitchin *Jurisdictions*, pp. 18, 83, 90, and 127. Cf. case of *Swan v Morgan*.

2 Sheppard *Court Keepers' Guide*, p. 85.

3 Comyns *Digest*, s. v. *Leet*. Cf. *Griesley's* case, and *Bullen v Godfrey*.

4 Rittson *Jurisdiction of Court Leet*, p. 2.

5 Stat. 33 Hen. VIII., cap. 6, § 13.

6 Stat. 1 Eliz., cap. xvii., § 10.

7 Sheppard *Court Keepers' Guide*, p. 21.

8 *Vluar Abridgment*, s. v. *Court Leet*. A contrary opinion, which however seems to lack support, is to be found in some writings. Kitchin (*Jurisdictions*, p. 227) says: "It seems if he were presented by twelve it shall not be traversed, but if it were false he shall have recovery by writ of false presentment,"—a very enigmatical statement, seeming to imply that a presentment by twelve is necessarily true. Comyns (*Digest*, s. v. *Leet*) is clearer: "If a presentment by twelve be false, the party at the

That false presentment was not a wholly visionary danger, at any rate in the mediæval period, is made clear from the *Rolls of Parliament*. In 1314 the commonalty of Suffolk complained "that the chief-pledges at leets and tourns of the sheriff present men falsely, as being guilty of articles of leets and tourns of the sheriff, when they are not guilty; and when the leets are held in the town to which the sub-bailiffs belong, they procure themselves to be the chief-pledges in the leets in order to make advantage out of their mysteries (offices) and the more to damage those who have grieved them."¹

(6) In order to remedy this and other scandalous abuses of the inquisitorial system of presentment, an effort was made by a statute of Richard III.'s reign, 1483,² to raise the status of the juries in the sheriff's tourn. "Forasmuch as divers great inconveniences and perjuries do daily happen in divers shires of England by untrue verdicts given in inquisitions and inquiries before sheriffs in their turns, by persons of no substance nor behaviour, nor dreading God nor the world's shame, by reason whereof divers and many of the king's lieges of divers parts of England, by exciting and procuring of their evil willers, be wrongfully indicted, and others that ought of right to be indicted by such exitation and procuring oftentimes be spared, contrary to common right and to good conscience, in eschewing whereof be it ordained by the king our sovereign lord, by the advice of the lords spiritual and temporal and commons in this present parliament assembled, and by authority of the same, that no bailiff nor other officer from henceforth return or impanel any such person in any shire of England, to be taken or put in or upon any such inquiry in any of the said turns, but such as be of good name and fame, and having lands and tenements of freehold within the same shires to the yearly value of 20/- at the least, or else lands and tenements holden by custom of manor, commonly called copyhold, within the said shires, to the yearly value of 26/8 over all charges at the least; and if any bailiff or other officer within the said counties hereafter return or impanel any person contrary here-

day of presentment shall have a writ of false presentment." But how is it to be shown to be false, if the writ is not available in every case? Scriven adopts another mode of escape from that mystery of iniquity, the false presentment which is untraversable as the Gospel: "It would seem," he says, "that perjury or wilful concealment of a jury in leet was always inquirable there by another jury and punishable by due." (*Copyhold*, 3rd Ed., Vol. II, p. 869). But Scriven's opinion appears to be based on the doubly insecure foundation of a misinterpretation of a passage in the untrustworthy *Mirror of Justices*. See more fully below under "traverse."

¹ *Rotuli Parliamentorum*, Vol. I., p. 293.

² Stat. 1 Ric. III., cap. 4.

unto, he to lose for every person that he so impanelleth and returneth, not being of the sufficiency as is aforesaid, as often as he so offendeth, 40/-."

So far as I can see, there is no reason to believe that this statute was ever generally enforced in the tourns, or applied at all to the leets. It was not, however, formally repealed till 1825.¹

(7) One more question remains. Who appointed the jurors in a manorial leet? As to this, the text-writers are singularly reticent. It would seem, however, that as a rule it should *not* be the steward of the court.² In the absence of a good custom to the contrary, it should be the bailiff who selects.³

§4.—The Officers.

The guide-writers who were so careful to distinguish between court leet and court baron, made little or no effort to mark off the officers appropriate to the one court from those peculiarly attached to the other. This was probably due to the fact that most officers (the steward apart), whatever their functions, held their positions for a year and were appointed at one of those two great bi-annual assemblies at which the view of frankpledge was taken and criminal justice administered—in other words, in a combined and undifferentiated court. This non-differentiation of officers, indeed, is eloquent testimony to the essential non-differentiation of the courts. It would seem to confirm the almost universal evidence of court rolls, viz., that every court leet was, as a matter of fact, so long as courts baron flourished, also a court baron, capable of performing all, and actually performing many, of the functions of the ordinary three-weekly court baron.

If one were to go beyond the guide-writers and were to try to separate what they have allowed to remain joined, one might venture to say that the only officers who are peculiarly and exclusively leet officers are the constable (with his deputies

¹ By stat. 6 Geo. IV., cap. 50.

² Scriven *Copyhold*, 3rd Ed., Vol. II., pp. 842-4; Elton and Mackay *Copyhold*, p. 302. Cf. also the Taunton petition against a jury nominated by the steward in 1642, quoted Merewether and Stephen *Hist. Boroughs*, pp. 1654-5. However, in the Petersfield case of *R. v. Jolliffe* in 1823, the fact that the steward of the manor of Mapledurham had for twenty years without dispute nominated the jury was held to have established a good custom to that effect. Cf. also case of *Crane v. Holland*.

³ A *Year Book* 1428 gives a case in which a bailiff is fined for not impanelling a jury. The cases of *E. v. Harrison* and *R. v. Bingham* support the rule, which will be further exemplified in the second part of this essay, e.g., under the heads of Bridport, Liverpool, and Birmingham. In municipal leets, however, custom varied greatly. In Coventry, for example, the jurors were chosen by mayor and council, in Warwick by steward and mayor, in S. Cleare by the portreeves, and so on.

and assistants) and the ale-conner; the one the keeper of the peace, legal descendant and representative of the old chief pledge, deciner, or tithingman; the other the keeper of the assizes of bread and ale; the two together the executors of those two franchises—view of frankpledge and maintenance of the assizes—which are the outstanding marks of leet jurisdiction. But one must not go beyond the guide-writers in “logic-chopping,” and in their manuals they recognise the following much longer list of leet officials.

(1) *The Steward*. The steward is the chief official present. In manors his position goes with that of seneschal or head administrative agent of the lord.¹ In the court leet he occupies, in legal theory, a wholly different position from that which he holds in the court baron. In the court baron, that is in matters relating to freehold and to money, the free suitors are judges, and the steward merely their president. In the court leet, that is in matters relating to royal prerogative, the steward is judge; to him the jurors make their presentments. He is more than a mere officer of the court; in a sense he *is* the court (so that an appointment made by “the court” may be made by the steward), or at the least an integral part of it. He is expected to be skilled in the law.² He has power on his own authority to levy a fine for contempt of court.³

(2) *The Constable* has the duty of keeping the king’s peace and enforcing order in the particular locality for which he is appointed. His principal common law duty is to arrest offenders: his main statutory obligations, of which watch and ward and hue and cry are the most onerous, arise from the *Statute of Winchester* (13 Ed. I., Stat. 2) as modified by later legislation.⁴ Moreover, “the jury being to present offences and offenders are chiefly to take light from the constable of all matters of disturbance and nuisance of the people.”⁵ In other words, he does precisely what the chief pledges are represented by Britton as doing in Edward I.’s reign. If anything more is needed to suggest the identity of the modern constable with

¹ In boroughs he is commonly the town clerk, the legal representative of the corporation in whom the lordship of the leet is vested.

² Kitchen *Jurisdictions*, p. 83.

³ Scriven *Copyhold* (3rd Ed., Vol. II., pp. 846-8), gives an excellent account of the duties of the steward.

⁴ Coke summarises them under five heads, viz., (1) view of armour, (2) suits of towns, (3) highways, (4) strangers, (5) hue and cry. *4th Inst.*, p. 267. Cf. also Bacon *Answers*, p. 752. The lengthy “Oath of the Constable” given by Kitchen (*Jurisdictions*, p. 96) supplies a valuable epitome of what is expected from him.

⁵ Bacon *Answers*, p. 750.

the mediæval chief pledge, it is supplied by Sheppard, who speaks of him as the officer of the tything, and refers to him as "the tythingman."¹ The appointment of the constable rests with the jurors, and not with the steward. A person who, when duly appointed, refuses to take the oath or to serve, may be fined.² In some large manors a paid deputy-constable has been appointed in recent times.³

(3) *The Ale-conner* is thus described by Comyns: "An ale-conner shall be sworn in the leet to see that bread be weighed according to the assize and that ale be wholesome and sold at due prices and to present all defaults of brewers and bakers."⁴

(4) *The Bailiff or Reeve*. The terms "bailiff" and "reeve" (A.S. *gerefa*) are both very broad in their connotation. They can be properly applied to any person who exercises any kind of delegated authority.⁵ In the manorial courts the names are generally—but by no means exclusively—bestowed on those officers who, on behalf of the steward, collect rents, revenues, and other profits, and make up the accounts.

(5) *The Beadle*, where he is distinct from the bailiff, has, as his special duty, to execute attachments and other processes, to present pound-breaches, to look after waifs, strays, and chattels of felons.

(6) *The Hayward* or "hedeguard" (Cf. Fr. *haie* = a hedge), where he is distinct from bailiff and beadle, looks after the commons and the cattle thereon, and prevents the hedges of the enclosures from being injured.

(7) *Miscellaneous*. Besides these regular and staple officers, there are at different places and times a multitude of others, with special functions and peculiar names; but, because they are merely local or ephemeral, they are passed over by the authors of general treatises.⁶

Concerning all these officers (the steward, the paid and permanent representative of the individual or corporate lord, of course excepted), the following points are to be noted. First,

¹ Sheppard *Court Keepers' Guide*, pp. 63 and 28.

² Cf. cases of *Fletcher v. Ingram* and *R. v. Stevens*; see also *The Power and Practice of the Court Leet of the City and Liberty of Westminster*, A.D. 1743, a vigorous attack upon leet jurisdiction, attributed to Sir Matthew Hale.

³ Cf. *Manchester Court Leet Records*, Vol. VIII., p. vi., and Vol. IX., p. vi.

⁴ Comyns *Digest*, s. v. *Leet*. Cf. *Kitchin Jurisdictions*, p. 94, where the "Oath of the Ale-taster" is given.

⁵ McKechnie *Magna Carta*, p. 372.

⁶ In the manor of Manchester in 1756 there were in all 138 officers: see *Manchester Court Leet Records*, Vol. VIII., p. v., and Vol. IX., pp. v-vi.

they are unpaid. Secondly, every male resident of full age can be compelled, under penalty, to serve. Thirdly, as a rule the jury hands in to the steward a list containing the names of suitable persons, and from these lists the steward chooses the persons who are to serve.¹

CHAPTER X.—THE JURISDICTION OF THE COURT LEET.

(I.) GENERAL PRINCIPLES.

§1.—Introductory.

The effective jurisdiction of the manorial court leet, as it is defined in the modern court keepers' guides, is of a very limited range. It is confined to petty common-law misdemeanours and public nuisances on the one side, and to a few trivial statutory offences on the other side. But it bears about it many evident traces of old-time connection with jurisdictions of a larger scope and of a different order. Its common-law powers (which are immeasurably more important than its comparatively-late-appended statutory powers) consist, in part, of the small fragments of the once-extensive criminal jurisdiction of the sheriffs and the stewards of the greater franchises—such *disjecta membra* as have appeared to the acquisitive central government too small to be worth snatching at—and, in part also, of jurisdiction over such nuisances and civil wrongs as legal ingenuity, long-operative and (to the lay mind) infinitely tiresome, has succeeded after ages of litigation in defining as *public offences*, in contradistinction to *private grievances*, which latter are regarded as the proper matter for personal action in the court baron, the county court, or other civil tribunal. In order, then, to trace the historic development of the composite jurisdiction of the modern court leet, the courses of three separate processes have to be traced; first, the process of the decline of the judicial authority of the sheriff and the high-seignorial steward, which culminated in the transference of all their larger rights of criminal jurisdiction to the hands of other officials—coroners, justices of the peace, justices in eyre; secondly, the process of the differentiation of the civil jurisdiction of the seignorial court into two

¹ Webb *English Local Government (The Manor and the Borough)*, Book III., Chap. I.

portions, the one relating to public or communal matters, which are assigned to the court leet, the other relating to private or personal matters, which are assigned to the court baron; and, thirdly, the process of legislative enactment which, during the period extending from the reign of Henry VIII. to that of George I. (1523—1715), from time to time added new items to the list of the articles of the leet.

§2.—The Decline of the Sheriff and the Steward.

(a) *The Sheriff*. Professor Maitland has remarked, at once epigrammatically and profoundly, that “the whole history of English justice and police might be brought under this rubric, ‘The Decline and Fall of the Sheriff.’”¹ Let us note the main stages of the sheriff’s downward career. The century succeeding the Norman Conquest was the heyday of his power. He represented the king, and exercised rights, vast and undefined, vice-regal rather than vice-comital, in all matters judicial, administrative, financial, and military. But after the twenty years of anarchy known as the reign of Stephen (1135-1154), his vice-regal power having grown to be regal in its independence, and his office tending to be claimed as hereditary, it became necessary (and it was, happily, possible) for Henry II. and his successors to take strong measures of repression. The *Assize of Clarendon* (1166) in theory left the sheriff’s powers undiminished; nay, indeed, if it *did* (as Professor Maitland suggests) inaugurate the sheriff’s tourn, it positively increased them, by making the sheriff dominant in the great hundred court. But, in fact, the *Assize of Clarendon* seriously reduced the sheriff’s judicial authority by introducing into the shire court the itinerant justices and the presentment jury, who speedily superseded the sheriff and the old-time suitors in the more important criminal cases, viz., those of murder, theft, and robbery. The sheriff’s active jurisdiction over pleas of the crown was thus transferred from the shire court to the inferior court of the hundred. In 1170, by the *Inquest of Sheriffs*, a close scrutiny into the administration of these officials was made, as a consequence of which the majority of the sheriffs were dismissed.² In 1176 the *Assize of Northampton* set apart forgery, arson, and treason, in addition to murder, theft, and robbery, as matters specially

¹ Maitland *Justice and Police*, p. 69.

² Stubbs *Select Charters*, pp. 147-50.

reserved for the royal justices.¹ In 1194 (if not earlier) officials called "coroners" were appointed to keep (*custodire*) the pleas of the crown. Their work was to do what the sheriffs had hitherto done throughout the shire, viz., make a preliminary inquest into pleas of the crown, "keep" the pleas and the accused persons concerned with them, and present them to the justices when they came on their eyre.² There can be little doubt that if the coroner's office had flourished, and the coroners had fulfilled their original purpose, the coroner's jury would have superseded the leet jury entirely in this matter of preliminary inquiry into felonies and the presentment of felons to the justices in eyre. But—for reasons which need not be recapitulated here—the coroner's office shrank in importance until only a few matters, of which "the death of a man" was by far the most serious, remained within the coroner's purview. The sheriff, then, survived, though with somewhat impaired prestige, the once dangerous rivalry of the coroner, and with him survived—though doubtfully in the case of homicide—the powers of preliminary inquest and presentment which had been left to the sheriff's tourn by the *Assize of Northampton*. Two more blows, however, at long intervals, fell upon his jurisdictional authority, reducing it to the modest limits within which it is found in the modern court keepers' guides. *Magna Carta*, 1215, formally took from the sheriff all power to "hold" (*tenere*)—i.e., to try cases concerned with—pleas of the crown: "Nullus vicecomes, constabularius, coronatores, vel alii ballivi nostri teneant placita coronæ nostræ."³ Finally, in 1461, a drastic statute of Edward IV.⁴ deprived the sheriff of the effective half of his remaining power of inquest and presentment by decreeing that after he, in his tourn or elsewhere, has inquired into a case of felony or other offence, he is not any longer, as has been his custom, to arrest the offender, imprison him, or release him on bail; but he is to transmit the indictment to the justices of the peace at their next sessions,⁵ and

¹ Stubbs *Select Charters*, p. 150.

² Stubbs *Select Charters*, p. 260, and cf. McKechnie *Magna Carta*, p. 362.

³ The mediæval articles of the view given in the last section of this essay show the sheriff's judicial power at the stage of decline to which *Magna Carta* had reduced it. The three statutes relating to mode of presentment and impanelment of juries (13 Ed. I., cap. 13; 1 Ed. III., cap. 17; and 1 Ric. III., cap. 4) were not without their adverse influence on the sheriff. See above, Chapter IX., § 3, and below, Chapter XI., § 1.

⁴ 1 Ed. IV., cap. 2.

⁵ The notable and peculiarly English institution of the justices of the peace can be traced back to the *Statute of Winchester*, 1285 (13 Ed. I., Stat. 2, cap. 6, § 13). It took its permanent form, however, under a statute of 1360 (34 Ed. III., cap. 1). To the justices of the peace were gradually transferred most of the judicial and administrative powers of the sheriffs. See Maitland *Justice and Police*, pp. 79-80, and Holdsworth *Hist. Eng. Law*, pp. 124-5.

they are to issue the warrant for arrest and see to the presentment of the accused before the king's judges in their eyre. This blow, which deprived the sheriffs and their tourns of all profit and all real authority in the matter of inquiry into and presentment of felonies, reduced that part of their jurisdiction to a matter of theoretical interest only. This important statute of 1461, in fact, may be said to mark the lowest depth of the humiliation of the sheriff as judge; it was practically the death blow to the tourns; they were reduced to the rank of communal leets. With the decay of the system of frankpledge and the rise of the criminal jurisdiction of the justices of the peace, the tourns ceased to have anything important to do. At any rate, there was not enough to do to make it worth while for the humiliated sheriff to continue to go on his circuits. So, slowly and silently, the tourns died, though not till 1887 were they accorded a decent burial.¹

(b) *The Steward.* The stewards of the palatine earldoms and the marcher baronies, together with the stewards of a few great honours and liberties—such as the honour of Wallingford and the liberty of St. Peter of Medeshamstead (the soke of Peterborough)—at one time possessed powers little, if at all, inferior to those of the sheriffs at their height. Their powers of high-justice were all in course of time taken over by the crown, but *how* this was done is a story too long to be told here, for it is a story which has to be told differently in each individual case. By escheat, by forfeiture, by purchase, by exchange, by *quo warranto*, by legislation, by one means or another, royal justice was made to prevail over seignorial justice, and the stewards of franchises were reduced to the level of the humiliated sheriffs and the modest keepers of manorial leets.

§3.—Public Offences and Private Grievances distinguished.

Not only, however, did the leets retain and exercise such fragments of criminal jurisdiction as the central government at the end of the middle ages had left to sheriffs and stewards; they also gathered to themselves a large authority over a great variety of offences which can best be grouped under the head of *public nuisances*. They dealt, for example, with pollution of waters, poisoning of air, stopping of ways, breaking of hedges, setting up of walls; with eavesdropping, vagabondage, tavern-

¹ 50-51 Vict., cap. 65, § 18 (4): "The sheriff's tourn is hereby abolished."

haunting, and similar injuries and annoyances to the body politic, in long enumeration. There is no doubt that the undifferentiated manorial court of the middle ages had dealt with all these matters, and also with many others, some closely akin to them, such as encroachments on commons and pollution of private wells, others widely diverse, such as disputes concerning ownership of lands, and payments of debts. But when the lawyers began to separate in legal theory the court leet from the court baron, it became necessary to find some test which should make it possible to distinguish the civil jurisdiction proper to the one from the civil jurisdiction proper to the other. They chose the test of publicity: did a matter concern the whole resiant community of the king's subjects, then it was a leet matter; did it merely concern some section, large or small, then it was not a leet matter, and a remedy must be sought elsewhere. "This court is solely intended," runs an eighteenth century charge to the Manchester court leet jury, "for the publick good, and cannot be rendered subservient to any private purpose whatever without corruption, without perjury, or without injustice."¹ This clearly-expressed view is fully in accord with the tenor of the court keepers' guides. Nelson, for instance, says: "A leet cannot amerce for a particular trespass done to the lord of the manor, or to any other person, where an action will lie to recover damages, but only for a publick nuisance."² In similar strain Sheppard: "As to the particular grievance of one man, or the special grievance of one parish, you are not to inquire in this court, but that which is or may be generall"; and again: "this court is a power for the redressing and the reforming of publique wrongs to the whole body of the commonwealth."³ The test seems an intelligible one; but it is not so simple as it looks, and it is not an easy one to apply in practice. The distinction between "public" and "private," as Austin points out,⁴ is illusive and unreal. The community is akin to an organism; if one member is injured, all suffer; if the whole is weakened, each part shares the loss. Hence the attempt to apply the test to cases brought before the courts has led to much legal quibbling. Thus a presentment *ad nocumentum diversorum* or *ad nocumentum habitantium*

¹ *Manchester Court Leet Records*, Vol. IX., p. 242.

² Nelson *Lex Maneriorum*, p. 142.

³ *Sheppard Court Keepers' Guide*, p. 44. Cf. also pp. 13, 17, and 23-4.

⁴ *Austin Jurisprudence* (5th Ed.), pp. 744-60.

is bad,¹ but a presentment *ad grave nocumentum omnium vicinorum* is good.² Similarly, presentments *ad commune nocumentum*,³ and *ad magnum nocumentum*,⁴ are insufficient; while a presentment *ad nocumentum ligeorum Domini Regis* is satisfactory.⁵

The most important matter to which this illusive test is applied is the matter of encroachments upon the common lands of the manor. One would have thought that nothing could more readily have satisfied the test, and, in point of fact, courts leet all over the country *did* deal with the matter. But no; legal opinion leans to the opposite view: "Presentment in a leet," says Kitchin, "that J. S. hath enclosed such lands which ought to lye in common for the inhabitants of the town is a void presentment, for it is a wrong, but no common annoyance."⁶ Another difficult and doubtful matter is assault. When does an attack upon an individual become a public disturbance? A purely arbitrary answer has to be found; and the answer given usually is, when blood is drawn. These examples, however, will be dealt with later on. It is enough here to state the general principle.

§4.—Common-Law and Statutory Offences.

The development of statute law brought forward for settlement in course of time several other difficult problems affecting leet jurisdiction. Could the leets deal with new statutory offences? Did old common-law offences pass out of the competence of the leets when they were made statutory? A two-fold rule was eventually laid down. On the one hand, every common-law offence which has ever been within the scope of leet jurisdiction remains within it unless it is expressly removed by statute; on the other hand, no statutory offence comes within the jurisdiction of the leets unless it is expressly placed there by the terms of the statute.⁷ Thus, under the first head, treasons, which as such are wholly statutory in origin, continue as felonies at the common

¹ Case of *Sheppard v. Hall*.

² Bateson *Records of Leicester*, Vol. II., p. 178.

³ *Viner Abridgment*, s.v. *Leet*.

⁴ Merewether and Stephen *Hist. of Boroughs*, p. 1723.

⁵ Cf. cases of *Pratt v. Stearn*, *Hughes v. Bishop of London*, *R. v. Dickenson*, *R. v. Ayers*.

⁶ Kitchin *Jurisdictions*, p. 46. See more fully below, Chapter XII., § 6.

⁷ *Sheppard Court Keepers' Guide*, p. 11; Kitchin *Jurisdictions*, p. 44; Brooke *Abridgment*,

s. v. *Leet*.

law to be enquirable (though, of course, not punishable) in leets.¹ And, again, purse-cutting, which is a felony by statute, and as such outside the competence of leets, remains enquirable as a common-law trespass.² On the other hand, under the second head, the taking of tame beasts from parks, and the cutting out of the tongues and the pulling out of the eyes of the king's liege subjects, although made felonies by statute, come, even as such, within the scope of leet enquiry by express enactment.³

Concerning two offences, however, there is very grave difference of opinion among lawyers. These two are homicide and rape. Are they, or are they not, enquirable in a leet? One view of these doubtful cases is expressed by Viner who, summarising various authorities, comes to the conclusion that the leet has power of enquiry into all common-law felonies "besides the death of a man and the rape of a woman."⁴ Ritson states emphatically the contrary view, and treats the exclusion of homicide and rape from the scope of the leet's enquiry as "an ancient but erroneous opinion."⁵

It is easy to understand how any legal writer who had an eye on the world of practice should be willing to make these two exceptions to the general rule that all public common-law offences come within the purview of the leet inquest. For just

¹ Sheppard *op. cit.*, p. 39; Kitchin *op. cit.*, pp. 42-44. Among public wrongs the supreme and inexplicable crime of treason was entirely the creature of statute. Certain old common-law felonies such as murder, or common-law trespasses such as rape, were by solemn enactment invested with a peculiar enormity when the person of the king or queen was the victim, or when the honour and security of the state were threatened. The offences thus singled out for special execration were, for the first time, formally defined under seven heads by an Act of Edward III. (25 Ed. III., Stat. 5, Cap. 2), which remained down to the passing of the *Treason Felony Act* of 1848 the basis of the law of treason. The seven offences thereby made treasonable were (a) compassing or imagining the death of the king, the queen or their eldest son and heir; (b) violating the queen, the king's eldest unmarried daughter, or his eldest son's wife; (c) levying war against the king in his realm; (d) adhering to and aiding the king's enemies; (e) counterfeiting the king's seal; (f) issuing false money; and (g) slaying the chancellor, treasurer, or justices whilst discharging their offices. The selection of these seven seems to have been due to the influence of the writings of Bracton (Cf. Bracton *Tractatus de Legibus*, Lib. III., cap. 3, fol. 118b). Persons found guilty of these offences were distinguished in three ways from ordinary felons; first, by the horrible severity of their punishment—they were liable, so far as human ingenuity could dream of the mercurial limitations of nature, to suffer half a dozen painful and shameful deaths, viz., drawing, hanging, disembowelling, burning, beheading, and quartering; secondly, by the fact that their crime was unclergyable; thirdly, by the consequence that their property was forfeited to the crown and not to their immediate lord (Cf. Pollock and Maitland *History of English Law* II., 500). But, further, in addition to these seven most heinous crimes which came in course of time to be known as "high" treasons, three other felonies were, under the name of "petty" treasons, set apart as sufficiently enormous—although they did not directly touch king or state—to demand a more condign penalty than mere death. The same statute of Edward III., already quoted, continues: "Moreover there is another manner of treason, that is to say, when a servant slayeth his master, or a wife her husband, or when a man secular or religious slayeth his prelate to whom he oweth faith and obedience." The penalty adjudged for these was burning at the stake (Cf. Kitchin *Jurisdictions*, p. 48) or hanging preceded by drawing (Cf. Pollock and Maitland, *Hist. of Eng. Law* II., 486).

² Kitchin *Jurisdictions*, p. 49.

³ Under Stat. 3 Ed. I., cap. 20, and 6 Hen. IV., cap. 5, respectively.

⁴ Viner *Abridgment*, s. v. *Court Leet*.

⁵ Ritson *Jurisdiction of the Court Leet*, p. xvi.

as any attempt to *punish* a murderer or a raptor would have brought the sheriff or steward into conflict with the king's justices in eyre, so certainly would any attempt to *hold an inquest* concerning them have brought these same officials into conflict with the coroner.¹ But though in actual fact there was probably an unbroken uniformity of practice (the coroner holding undisputed sway to the complete exclusion of the leets), yet in the realm of legal theory some champions of the leets, Ritson in particular, are unwilling to surrender regions once securely held, while others are in a state of hopeless mental confusion.

(a) *As to homicide*, Kitchin, for example, in his text includes among offences which "are inquirable and presentable in a leet but not punishable there," murder, manslaughter, and justifiable homicide.² But in his detailed commentary he strongly expresses precisely the contrary opinion, viz.: "felonies at the common law are inquirable but not the death of a man," and "you cannot inquire there of the death of a man, and the lord which inquires of that shall be fined forty shillings."³

(b) *As to rape*. The difficulty arose from the fact that rape was originally a common-law felony punishable by mutilation, but that by the *First Statute of Westminster* it was made a statutory trespass punishable by imprisonment, while by the *Second Statute of Westminster* it was again made a felony, this time punishable by death. Hence Coke argues: "If rape had not been made a felony by the *Second Statute of Westminster*, but had been felony when that act was made, then should the court of the leet have inquired of it as of a felony by the common law; but, seeing it was made felony by that statute, it hath been often adjudged that the leet cannot inquire thereof; for, albeit it was once felony, yet the nature of the offence being changed, as is above said, to be no felony, when another act made it felony again, yet could not the leet inquire thereof as of a felony."⁴ The prevailing opinion among the text-writers is, however, opposed to that of Coke. It seems to be held that although the *First Statute of Westminster* had for ever degraded rape from the rank of a common-law felony, it had not done more than reduce it to the grade of a common-law trespass. Thus Kitchin says: "Ravishing of a woman as trespass is inquirable

¹ Cf. Pollock and Maitland *Hist. Eng. Law*, II., 643, and Hudson *Leet Jurisdiction in Norwich*, p. xxxiv.

² Kitchin *Jurisdictions*, p. 17.

³ Kitchin *op. cit.*, p. 44.

⁴ Coke *2nd Institute*, p. 181.

and where it is not presented before the coroner," but "rape as felony, which is felony made by the statute, is not inquirable in a leet."¹

As to minor offences, a very considerable number were, during the sixteenth and seventeenth centuries, placed by express enactment within the jurisdiction of the leet.²

CHAPTER XI.—THE JURISDICTION OF THE COURT LEET.

(II) MATTERS ENQUIRABLE AND PRESENTABLE BUT NOT PUNISHABLE.

§1.—Introductory.

The distinction—primary and fundamental in all modern court keepers' guides and charges to juries—between offences punishable and offences not punishable in tourns and leets, seems in practice to be traceable backwards to (but not beyond) the *Assize of Clarendon*, 1166. That important ordinance, as we have seen, while in theory leaving the sheriff with undiminished (if not actually enlarged) rights of jurisdiction, as a matter of fact drew off from him all cases of murder, robbery and theft, and handed them over to the itinerant justices, leaving the sheriff few offences other than petty orles to deal with. The *Assize of Northampton*, 1176, emphasised the distinction, and added forgery, arson, and treason to the list of the major offences looked upon as peculiarly within the province of the king's justices. The division thus established in practice was stereotyped permanently in law by the well known clause of Magna Carta already quoted: "No sheriff shall hold pleas of the crown." In 1215, then, the separation of punishable from not punishable was completely effected; the only question was, what are the criminal pleas of the crown? For some time after the signing

¹ Kitchin, *Jurisdictions*, p. 17. Cf. also Sheppard, *Court Keepers' Guide*, p. 47, and Powell, *Court Leet*, where it is said: "It (rape) was ever anciently inquirable at the tourn and law day where it is not presented before the coroner." The whole question was very fully argued in an important case, A.D. 1483, which is reported in much detail in *Year Book for 22 Ed. IV.*, fol. xxii. Hussey, C. J., Genney, J., and Fairfax, J., held a presentment of rape in a leet to be void; Kebble, J., and Colowe, J., took the contrary view. The *Year Book for 1490* gives another case in which it was held that the offence of rape was not enquirable at the sheriff's tourn. Hale *Pleas of the Crown*, p. 117, expresses the same opinion.

² See below, Chapter XIII.

of Magna Carta the list fluctuated: wounding, mayhem,¹ and false imprisonment tended to be included, while, on the other side, hand-having and back-bearing theft tended (as we have seen) to remain outside. However, in Edward I.'s time the matter became more settled, and seven crimes, under the name of felonies at the common law, secured permanent recognition; these were, treason, homicide, arson, rape, robbery, burglary, and grand larceny.² For all of them the penalty was death. This penalty no sheriff in tourn or steward in leet could inflict. All they could do was to make preliminary enquiry into such cases as came to their notice, and then to present the offenders to the justices in eyre.³ This it was to their interest to continue to do in order not to forfeit the claim to receive the felon's goods and the escheat of the felon's estates.⁴

We have seen how the *Statute of Wales*, Fleta, Britton, and indeed all the mediæval authorities, recognise this fundamental separation of offences into major and minor. This recognition is to be found, however, only in their rules of procedure, not at all in their lists of articles. Nay, even the early-modern printed guides contain undifferentiated lists; indeed, (so far as I have been able to discover) it was not till Kitchin, about 1579, published the French original of his *Jurisdictions* that a clear and logical classification was made, so that on the one side were placed the minor offences over which sheriffs and stewards had powers of *oyer and terminer*, while on the other were set apart the major offences into which they could merely make preliminary inquest.

Even this right of preliminary inquest, however, did not remain unaffected by law. It was capable of abuse, and it was, as a matter of fact, abused. Innocent men could be, and were, arrested, indicted, imprisoned, and held to ransom. Indictments of guilty men could be, and were, stolen, and malefactors rescued. Juries of base men could be, and were, terrorised or bought. Hence four important enactments regulated the impannelling of juries, the drawing up of indictments, and the

¹ *Mayhem* = maiming in such a way as to render a man less able to defend himself in battle. It did not include such injuries as cutting off the nose, which accordingly had to be made felonies by statute later on.

² Pollock and Maitland *Hist. Eng. Law*, II., 470 and 511.

³ "In the old eyres the hundred-juries were expected to represent all these presentments of felony" made in the tourn. Pollock and Maitland, *op. cit.*, II., 650.

⁴ Kitchin *Jurisdictions*, p. 18: "And note that all . . . felonies by the common law . . . are here inquirable, otherwise the king shall lose year, day, and waste, and the lord his escheat." In other words, the king shall hold the estates for a year and a day, shall lay them waste, but shall then hand them back to the lord. Cf. also *op. cit.* p. 58.

arrest of persons accused :—(1) *The Second Statute of Westminster* (13 Ed. I., cap. 13) enacted that inquests in the tourn were to be taken by twelve lawful men, who should set their seals to the indictment; (2) a statute of 1327 (1 Ed. III., cap. 17) commanded “that the sheriffs and bailiffs of franchises and all other that do take indictments in their tourns or elsewhere where indictments ought to be taken shall take such indictment by roll indented whereof the one part shall remain with the indictors and the other part with him that taketh the inquest, so that the indictments shall not be embezzled as they have been in times past and so that one of the inquest may show the one part of the indenture to the justices when they come to make deliverance”; (3) in order to guard against wicked collusion between sheriffs or stewards and their juries, which were often composed of men of low degree and lower morals, it was enacted at the beginning of Ed. IV.’s reign (by 1 Ed. IV., cap. 2) that sheriffs and stewards should no longer have “power or authority to attach, arrest, or put into prison, or to levy any fines or amercements upon, persons indicted,” but that they should merely transmit the indictments to the justices of the peace at their next sessions in order that they might take the necessary action; finally (4), to remedy the evils which arose from the fact that juries of indictment were sometimes composed of men of “little goods,” or even of “menial servants and bailiffs,” it was made imperative (by 1 Ric. III., cap. 4) that jurors in these serious cases should be either 20/-freeholders, or 26/8 copyholders. Hence it was possible for Sir Matthew Hale in his day to lay down five conditions of a valid indictment of felony in a tourn or leet, viz. :—first, it must be made at the proper time and place; secondly, it must be under the seal of twelve jurors; thirdly, it must be indented; fourthly, the indictors must have the required property qualification; and fifthly, it must relate to a felony at common law or to one expressly placed within the competence of tourn and leet by statute.¹

¹ Hale *Pleas of the Crown* (1716), p. 173. Note, however, that even in Hale’s day the power of the presentment of felonies in tourns and leets was of little practical importance. Thus Hale’s contemporary, Scroggs, C.J., in his book on *The Practice of Courts Leet, etc.*, omits from his charge (4th Ed., pp. 17-22) all mention of the graver offences, and says at the end: “Note, there are several things that are presentable and inquirable in a court leet, but not being punishable they are not taken notice of here, as being more proper for the quarter sessions or assizes.” Cf. also the charge to the Manchester leet jury in 1788, given in *Manchester Court Leet Records*, Vol. IX., pp. 240 et seq.

§2.—Common-Law Felonies.

Although, then, the punishment of felons was taken out of the hands of sheriffs and manorial stewards at so early a date as 1215, yet the right to enquire into felonies at the common law and to present those accused of them to the king's justices remained in theory with the sheriff-in-tourn until the formal abolition of the tourns in 1887, while it still remains in theory to the steward-in-leet,¹ always, of course, under the condition that the right in any particular case has not been expressly taken away by statute. It is held by the lawyers that even though a felony at common law, such as the murder of a master by a servant, has been made a treason by statute, it yet retains its old character as a felony unimpaired—a judicial reserve in case the statute is repealed; similarly, that a felony at common law, such as theft, does not cease to be such on receiving statutory recognition as a felony. There is difference of opinion, however, as we have seen, as to whether a felony at common law, such as rape, which has been degraded by statute to the condition of a mere trespass, loses altogether by its statutory degradation its character as a common-law offence, or whether it is merely lowered to the rank of a common-law trespass. Nevertheless, the general rule is: "once a common-law felony, always a common-law felony," and from this it is deduced that the stewards of the manorial courts leet can claim the right to enquire into cases of the following crimes, concerning each of which a word or two may perhaps be allowed:—

(a) *Treason as Felony.* This consists of the seven high treasons—crimes affecting the persons of the king and royal family, or the security and well-being of the state—as enumerated in the act of 1353,² and defined by many subsequent statutes; and, further, of the three petty treasons—the killing of husband by wife, of master or mistress by servant, of "ordinary" (*i.e.* bishop or abbot) by religious person—crimes for which the mere penalty of death seemed to the mediæval mind too mild.³

(b) *Murder, Manslaughter, and Homicide in self-defence or by mischance.* In practice the coroner's jury makes inquest into "the death of a man," and the coroner draws up and forwards the bill of indictment based upon the findings of the jury. But

¹ Cf. the charge annually read to the Southampton jurors: Appendix I, below.

² See above, p. 99, note 1.

³ Cf. Kitchen *Jurisdictions*, p. 48; "A woman of the age of thirteen years was burnt, for that she killed her mistress, which proves that this is treason, for otherwise she should have been hanged."

in theory (so far as I can discover) there is nothing to prevent the leet jury from enquiring into, and the steward from presenting to the justices, any cases that may arise.¹

(c) *Rape as Trespass*. The problem which arose respecting this one-time common-law felony has already been stated.² The dominant, and undoubtedly better, view is expressed by Kitchin thus: "Ravishing of a woman as trespass is inquirable and where it is not presented before the coroner."³ It is notable that this second doubtful case, like the first, viz., homicide, is one in which the rival authority is that ancient enemy and supplanter of the sheriff, the coroner.

(d) *Burglary*. This is defined by Kitchin as the offence of breaking "houses, churches, walls, towers, or doors after the sun set and before the rising thereof."⁴ The offence is looked upon as committed even though nothing is taken, indeed even if the "breaking" itself is incomplete.

(e) *Robbery*. Concerning this felony Sheppard says, "To take away anything, though but a penny, openly or secretly, from the person of another, is robbery."⁵ As to the penalty, Kitchin quotes two divergent opinions; the first gives 2d., the second 1/-, as the amount the taking of which incurs the death of the robber by hanging.⁶ The common law ultimately decreed death to the robber irrespective of the amount or value of what he seized.⁷

(f) *Larceny*. Two grades of larceny are distinguished, viz.: (1) "grand" larceny, where the theft is of goods of over 1/- in value and for which the penalty is death, and (2) "petty" larceny, where the theft is of goods of 1/- and under in value—such as "hens, geese, pigs, or small things out of windows," says Kitchin, in eloquent testimony to the fluctuations of the currency—for which the penalty is a whipping, exposure in pillory or tumbrel, or loss of an ear.⁸

¹ This is the view of Kitchin in his charge (p. 17) and of Powell, Ritson, and many others. The contrary opinion, however, is expressed by Coke (*2nd Institute*, p. 32), Sheppard (pp. 17 and 39), and by most later writers who take Coke as their authority. I have failed to find adequate warrant for this alleged exception to the general rule. Cf. above, Chap. X., § 4.

² See above, pp. 100 and 104.

³ Kitchin *Jurisdictions*, p. 17.

⁴ Kitchin *Jurisdictions*, p. 17. Cf. also Coke *3rd Institute*, p. 63. Some older definitions, e.g., that given by Britton, I., 42, omit the requirement "by night," which in Kitchin's time, as now, was essential.

⁵ Sheppard *Court Keepers' Guide*, p. 40.

⁶ Kitchin *Jurisdictions*, p. 51.

⁷ Hale *Pleas of the Crown*, I., 532.

⁸ For the late inclusion of larceny among pleas of the crown, cf. Pollock and Maitland *Hist. Eng. Law*, II., 494-6. In days when larceny was punishable in the local courts—that is till Edward I's time or thereabouts—the condemned thief was frequently handed over to his pursuer for execution. At Dover he was precipitated from the cliff into the sea; at Sandwich he was buried alive; at other seaports he was tied to a stake at low water mark and left to drown. See *Green Town Life*, I., 222.

(g) *Arson*. This felony is, strictly speaking, limited to the burning of houses.¹ But the guide-writers follow the law courts in including the wilful setting on fire by night of barns of corn and farm buildings.² The penalty for arson so late as John's reign had been the sympathetic one of burning at the stake;³ but from the thirteenth century down to the nineteenth death by hanging was substituted.⁴

§3.—A few Statutory Felonies.

"A felony by statute," says Coke, "is not inquirable in the leet," unless the statute which creates it, expressly "gives an inquiry to the leet."⁵ The exception is of theoretical interest rather than of practical importance, for the only examples of statutory felonies of which the leet is allowed to have cognisance seem to be (1) the taking of tame beasts from parks, by 3 Ed. I., cap. 20;⁶ (2) the cutting out of the tongues and the putting out of the eyes of the king's liege subjects, made felony by 5 Hen. IV., cap. 5;⁷ and (3) the stealing of doves from dovecotes, pigeons and goshawks from their nests, fish from ponds, swans and peacocks from private grounds, under various statutes of Edward IV. and Henry VIII.⁸

§4.—Accessories to Felony.

It is allowed that the leet has power to enquire into the misdeeds of "accessories to felony," whether their offence has been committed before or after the fact. Particular mention is made of the receiving of stolen goods, the harbouring of criminals and the concealment of their crime, the rescue of felons who have been captured and the voluntary or negligent allowing of their escape.⁹

¹ Coke *3rd Institute*, p. 67.

² *Kitchin Jurisdictions*, p. 17. *Sheppard Court Keepers' Guide*, p. 40.

³ Cf. *Munimenta Gildhallæ*, I., 101.

⁴ To the list of offences enumerated above, some guide-writers, especially those who, like Powell and Ritson, prefer to go back to extremely antiquated precedents, add several others. Thus Powell gives as enquirable, under the head of felonies, sacrilege, sorcery, conjuring, witchcraft, and præmunire. Ritson gives an immense list, compiled largely from Britton, Fleta, and the *Mirror of Justices*, and therefore containing mayhem, "all mortal offences," and every other archæological curiosity of thirteenth century law.

⁵ Coke *2nd Institute*, p. 181.

⁶ In this statute there seems to be no more express mention of toun or leet than that which may be included in the phrase, "so soon as the king shall find it by inquest" (*per bonæ enqueste*).

⁷ In this statute I fail to find any express reference to toun or leet at all.

⁸ *Kitchin Jurisdictions*, p. 18.

⁹ *Kitchin Jurisdictions*, p. 18; *Sheppard Court Keepers' Guide*, p. 41. For an account of the heavy penalties inflicted see Pollock and Maitland *Hist. Eng. Law*, II., p. 510.

CHAPTER XII.—THE JURISDICTION OF THE COURT LEET.

(III.) MATTERS FULLY DETERMINABLE AT COMMON LAW.

§1.—Introductory.

The cases which at common law are not only enquirable and presentable but also punishable in courts leet, consist, as has already been noted,¹ of petty misdemeanours on the one hand and public nuisances on the other. But both these terms are vast and vague; neither is patient of definition. Although, under the combined influence of the law-courts and the printing-press, the wide diversity of the mediæval articles of the view has given place in the modern court keepers' guides to a substantial uniformity, yet the uniformity is one of general principle only, leaving ample scope for infinite variety of particular application; it marks an agreement as to boundaries rather than a detailed survey of an interior. The modern articles of the leet, in fact, serve better to show what a court leet must *not* do than what it may do; are more effective in distinguishing its jurisdiction from that of quarter-sessions above and court baron below, than in depicting the precise content of its own sphere. The very indefiniteness, indeed, of the petty jurisdiction of the leet—together with the court's inquisitorial method of investigation, its summary procedure, its inexpensiveness, and its rapidity of action—is the chief source of its strength and a sufficient *raison d'être* of its long survival in manors and boroughs. Novel grievances which no recorded case has touched, and of which no legislator has dreamed, can be dealt with, without reference to statute or precedent, and dealt with by a process which admits of neither argument nor appeal. Threatened dangers to the commonwealth can be averted, subtle wrongs to the body politic redressed, moral and intellectual damages assessed, injuries of all kinds and degrees avenged. To set over against these advantages are some serious disadvantages. There are, of course, obvious perils to individual liberty in the existence of courts possessed of powers so large and ill-defined—perils of tyrannies, cruelties and iniquities akin to those which have made the name of the Inquisition a by-word and a reproach—but there can be no

¹ See above, Chapter X., § 1.

doubt that during those centuries when order and good government were struggling for the mastery against strong and unscrupulous foes, the courts leet served a purpose on the whole beneficent.¹ Since, then, the sphere of leet jurisdiction under the common law admits of no precise delimitation, all that can be done is to enumerate the offences which the guide-writers specially mention as coming within its scope, always bearing in mind that the list, long though it be, is merely a list of representative types.

§2.—Suit to the Court.

Personal attendance is demanded from (a) all called to act as jurors, (b) all officers, among whom are frequently mentioned the chief pledges, (c) all residents, *i.e.*, all persons between the ages of 12 and 60 who have lived for a year and a day within the boundaries of the leet—subject to the exceptions noted above.² Those who fail to appear without adequate excuse for absence are to be then and there amerced.

§3.—Service to the King.

As under the frankpledge system enrolment in a tithing was a duty enforceable in sheriff's tourn and steward's view, so, after the decay of frankpledge, the taking of an oath of allegiance to the king continues to be a service incumbent upon every male of the age of twelve and enforceable in the court leet. The leet jurors are required to search out and present defaulters, to whom the oath will be administered.³

§4.—Duty to the Lord of the Leet.

The jurors are required to present, and the court to deal with, (a) all neglect of services due to the court; (b) all failure of duty on the part of constables, bailiffs and other officers; (c) all withholding of profits and perquisites due to the lord, such as

¹ An interesting parallel might be drawn in this respect between leet jurisdiction and Star Chamber jurisdiction.

² Cf. above, Chapter X., § 2.

³ The form of oath of allegiance given by Sheppard is:—"You shall swear that from this day forwards you shall be true and faithfull to our Sovereign Lord the King and his heirs and lawful successors, and faith shall bear of life and member and terrene honour; and you shall neither know nor heare of any ill or damage intended unto him that you shall not defend. So help you God." It is recorded that at the Newbury leet in 1685 over two hundred persons swore allegiance to James II.

treasure-trove, waifs, strays, wreck of the sea, or goods of felons ;¹ (d) escape of villains, *i.e.*, "if any villains of the lord are fugitive and remain elsewhere out of the lordship."²

§5.—Annoyances to the King's Subjects within the Leet.

"All common annoyances . . . made within the leet are there enquirable," says Kitchin;³ while Sheppard points the general principle by mentioning as examples "the laying of any carrion or filth, setting up of houses of office, or the like."⁴ From the leet records of any manor or borough further examples, numerous and various, can be gathered—the keeping of hogs in backyards, the washing of clothes in the streets, the non-cleansing of ditches, the fouling of wells, the throwing of fishy water into the market squares, and a dozen other odorous offences against his majesty's liege subjects.

§6.—Injuries to Lands and Waters of the Community.

Under this head come such groups of popular annoyances as (a) the destruction of hedges and walls, the filling up of ditches, the stopping up of roads and paths, the damming of water-courses, the breaking down of bridges, the damaging, diverting, or straitening of common ways ; and (b) purprestures or encroachments made "in any land, wood, or water," and especially upon the king's highway. On one matter of this nature, however—and that a matter of first-rate importance to the old-day inhabitants of Southampton and many other places—there is a curious difference of opinion. It has already been briefly

¹ *Treasure-trove* in theory belongs to the king. Cf. Bracton, *l.* 26: "Treasure hid in the ground and found belongeth to the king"; and Statham (quoted by Kitchin, p. 80): "Treasure trove belongeth to the lord the king, and not to the lord of the liberty." But the lawyers, to harmonise their theory with facts, have to admit that, like leets themselves, it can belong to subjects either by royal grant or by prescription, and indeed it is so generally prescribed for that the theoretical exception becomes the practical rule, and we find Wilkinson saying: "You shall inquire of treasure troves . . . for if any hath been found within the jurisdiction of this court it belongs to the lord of this leet" (cf. also Kitchin, p. 23). The same rule would seem to be applicable to the other classes of perquisites—waifs, wreck of sea, felons' goods, and (doubtfully) strays—*i.e.*, in theory the king's, in practice and by prescription the lord's. *Waifs* are stolen goods or cattle abandoned by a thief in his flight from the hue and cry, the owner remaining unknown. *Strays* (*extrahura*) are "the tame beasts found wandering within the precinct of the law-day and not owned by any man." After due proclamation in church and in the neighbouring market towns, if they are not claimed within a year and a day, they become the property of the lord of the leet. *Wreck* signifies such goods as, after a ship has been lost, are cast upon the land, provided that no living creature, whereby the owner may be known, escapes. As to *goods of felons*, the fact that they go to the lords of leets, while goods of traitors go to the king, makes the lords very jealous of any extensions of the laws of treason. See Pollock and Maitland *Hist. Eng. Law*, II., 600.

² Kitchin *Jurisdictions*, p. 19: but this article of enquiry was of no practical importance in Kitchin's day. Cf. Cowell *Interpreter*, s.v. *Villain*: "There are not truly any villains now, though the law concerning them stands unrepealed."

³ Kitchin *Jurisdictions*, p. 46.

⁴ Sheppard *Court Keepers' Guide*, p. 13. Cf. stat. 12 Ric. II., cap. 13.

alluded to.¹ Can offences committed against the common lands, such as enclosing portions of them for private use, or oppressing them with cattle, be presented and punished in the leet? As has already been remarked, one would have said *a priori* that nothing could possibly be mentioned which more obviously and completely falls within the sphere of the expression, "common nuisances," than such offences. Again, if one looks through the rolls which record the proceedings of active courts leet, there are, in a large number of them, few presentments which one meets with more frequently than those relating to these very things.² Yet in spite of general principles, and in spite of widely-extended, if not indeed universal, practice, the guide-writers incline to the view that the enclosure of common lands, and the oppressing or overcharging of them with beasts or birds, are not offences of which a leet should take cognisance. Brooke allows jurisdiction only as a concession to custom, because "it is very usual in leets."³ Sheppard admits it, not on its own merits, but only by a fiction (similar to that which brought larceny within the compass of the pleas of the crown), viz., that to remove bounds, such as those of commons, "tends to debate," and so threatens the king's peace, whence those who offend "are very ill members and may be punished here."⁴ Others, however, will make no concession, and will employ no fiction. Thus Kitchin: "Presentment in a leet that J. S. hath inclosed such lands which ought to lye in common for the inhabitants of the town is a void presentment for it is wrong, but no common annoyance."⁵ Thus, too, in a similar strain Viner summarises his authorities concerning oppression: "A man cannot be amerced in a leet for surcharging a common, for that this concerns a private interest and not the publick; for this court is for royal justices and not for private matters"; and he instances a case (*Wormleighton v. Burton*) from the reign of Elizabeth: "In replevin the defendant made conusance as bailiff to G. for that he had a leet within his manor of D. and that the plaintiff was amerced at such a court for putting his geese upon the common there, and for that

¹ See above, Chapter X., § 3.

² Note, for example, from *Preston Court Leet Records*, p. 133, "Lawrence Cowp for oppressing ye Commons by keeping 200 sheep etc. to pay £6" (1681), and p. 185, "John Winckley Esquire for enclosing part of the Comon fields, and if he don't pull the same down on or before the first of May next we amerce him in £100" (1748). Cf. also *Manchester Court Leet Records* and *Southampton Court Leet Records*, references in Indexes.

³ Brooke *Abridgment*, s. v. *Leet*.

⁴ Sheppard *Court Keepers Guide*, p. 49.

⁵ Kitchin *Jurisdictions*, p. 46.

amercement he distrained; but the court held that this was not an article inquirable in a leet or punishable there and therefore the plaintiff had judgment."

If we ask for an explanation of these apparently eccentric opinions and decisions, we shall, I think, get valuable light upon the legal idea of the court leet in the sixteenth and seventeenth centuries. The court leet was regarded, not as the court of the community of the manor or borough, but as the *king's* court for the community of the manor or borough. Thus the offences over which it had jurisdiction were not those done to the community, *qua* community, but to the community as composed of the subjects of the king. The leet jurors were "*juratores pro domino rege*," and they enquired and presented, not on behalf of the lord of the leet, nor of the community within the territory of the leet, but on behalf of the king. Thus in a case (*Prat v. Stearn*) of James I.'s time, it was held that: "In every presentment of a nuisance in a court leet it must be mentioned to be *ad nocumentum ligeorum Domini Regis*, and the averring . . . that it was *ad commune nocumentum* is not sufficient."¹ The community, *qua* community, was merely a private person in the eye of the law; as such, it had its court baron to regulate its common lands and similar local affairs; in cases of tort—such as enclosure or overcharging—the several parties had their actions.² But, all the same, in practice this fine-drawn distinction was very generally ignored—a fact which, I venture to think, lends support to the view that (except in rare cases, such as that of Manchester, where a late and deliberate separation was effected) every court leet was also a court baron, or, in other words, that the manorial court was originally a single undifferentiated court.

1 *Viner Abridgment*, s. v. *Court Leet*.

2 *Brooke Abridgment*, s. v. *Leto*, says that a presentment in a leet of the enclosure of a common is void, "*car cest tort mes nul nuisance . . . car ambledeux les parties poient en cest case aver leur action*." So, too, Scroggs, *Court Leet*, p. 7, remarks: "It has been resolved that a man cannot be amerced in a court leet for surcharging a common, because this concerns only the private interests of the inhabitants." Cf. also Elton and Mackay *Copyhold*, p. 302. At Chipping Norton overcharging of the commons and encroachments thereon were mentioned in the charge to the suitors of the *court baron*, not in the charge to the jurors of the court leet. In an interesting case (*The Earl of Exeter v. Smith*) in Charles II.'s time, Tyrrel, J., held that a court leet cannot make by-laws for a common, for "if a leet may make a by-law as to commons, then the leet may make one by-law and the court baron another, and it cannot be known which is to be obeyed." The principle is clear; but to throw us back into our original confusion, the decision of Tyrrel was reversed on appeal, and judgment was given that the by-law in question was good.

§7.—Breaches of the King's Peace: Perils to the King's Subjects within the Leet.

There are very few offences which cannot be brought by legal ingenuity within the jurisdiction of a court which can take cognisance of breaches of the king's peace; just as, on the other hand, there are very few which cannot be removed from its jurisdiction if it is understood that it is prohibited from dealing with matters of merely private concern. The limits of the king's peace, as well as the distinction between "public" and "private," are purely arbitrary. It is not surprising, therefore, to find that in this matter of leet jurisdiction some extraordinary anomalies emerge. We have just seen the enclosure of common lands treated as a private wrong; we are now to see, *inter alia*, bawdery treated as a public offence, because, it is urged, "it is a cause to break the peace and is a vice which corrupteth the commonwealth"! After pondering these examples we shall be prepared to enjoy the spectacle of much legal juggling. (a) Under the head of breach of the peace naturally and obviously come "riots, routs, and unlawfull assemblies."¹ But what of minor affrays, those personal assaults, those stand-up-fights, which seem to have been of daily occurrence in the good old times of Tudors and Stuarts? A line must be drawn somewhere, even if it be drawn somewhat arbitrarily, between the raising of a popular tumult and the inflicting of an individual bruise. The lawyers draw a colour line: black and blue are private concerns, red is a public affair. "An indictment of assault and battery found in a leet without any blood spilt is not good."² Kitchin gives illustrative cases, *e.g.*, "Leet hath no power to enquire but of those which make common annoyance at the common law; as of affrayes and bloudshed, but not . . . if one hath beaten one; but if any affray were so that the king's people were disturbed, for that is more than particular."³ The king's people, it appears, will not be disturbed by the mere spectacle of one man beating another. We can well believe it; it is probably their chief regular diversion. But if "blood" be shed—that is another matter; it is "more than particular"; the king's peace is broken simultaneously with the sufferer's epidermis; the leet jurors must

¹ Sheppard *Court Keepers' Guide*, p. 14.

² *Viner Abridgment*, s. v. *Court Leet*.

³ *Kitchin Jurisdictions*, pp. 74-75.

present the offence, and it must be punished.¹ (b) Under the same head as open breach of the peace come neglect of the hue and cry, *i.e.*, failure to join the constable in the pursuit of fugitives from justice, and also the opposite offence, *viz.*, the false levying of hue and cry with the consequent apprehension of a man without cause.² (c) Also “if any rescous be made . . . upon the sheriff or his bayliffs, or any of the king’s officers in disturbance of any persons arrested, it is inquirable” and punishable; and similarly, “if any break the common pound, or take distress from thence.”³ (d) Finally, bawdery, as an offence at common law, is included because, as we have already noted, it is regarded as “a cause to break the peace” and as “a vice which corrupteth the commonwealth.”⁴

§8.—Evil Persons : Pests to the King’s Subjects within the Leet.

Offenders who escape the net set to catch breakers of the peace, and bring them before the leet—that is to say, offenders of the less energetic type, such as those who are merely irreducibly poor, or incurably lazy, or incapably drunk—are enmeshed as “evil members and persons of ill behaviours.” In most of the guides exceedingly comprehensive lists of such “evil persons” are given, and the fact that the lists do not entirely tally with one another is of little moment, because they are admittedly suggestive rather than exhaustive. The main representative classes are as follows :—

(a) *Haunters of Taverns*, especially such as “go about and have nothing to live upon.” With these may be included drunkards who are punishable in the leet as evil persons, but concerning whom, as we shall see, statute law makes more precise provision.

(b) *Night Walkers*, that is “those who sleep by day and walk by night.” Powell, in order that these evil persons may be the more easily identified, further describes them as, in their habits, “like antipodes.”

(c) *Eavesdroppers*, “which stand under walls or windows by night or day to hear tales and to carry them to others to make strife and debate among neighbours.”

¹ Scroggs, quoting Bacon as an authority, holds that all assaults, irrespective of bloodshed, are enquirable in leets. *Practice of Courts Leet*, p. 7.

² *Kitchin Jurisdictions*, p. 34. *Sheppard Court Keepers’ Guide*, p. 47.

³ *Kitchin Jurisdictions*, pp. 19-20. Viner, however, to the contrary, quotes a case in which “it was adjudged that pound-breach is not inquirable in a leet, because it is not a common nuisance.”

⁴ *Kitchin Jurisdictions*, p. 21. In the middle ages any attempt on the part of the leet to deal with this matter would have brought it into conflict with the spiritual courts.

(d) *Barretors*. The word "barretor" is defined by Cowell (who gives his readers a choice of three false etymologies) as signifying "a common wrangler that setteth men at odds and is himself never quiet, but at brawl with one or other." Kitchen uses it in this sense when he says that the leet jurors should enquire "if there be any common barretors in the lordship as scolds and brawlers."¹ But it has a more specialised meaning, and in that sense Sheppard employs it: it means one who stirs up litigation among his neighbours and takes part in it in order to share in the spoil.²

(e) *Forestallers, Regrattors, and Ingrossers*. These are three closely allied groups of offenders against the economic precepts of the common law. The fact that numerous statutes from Henry III.'s time down to Elizabeth's have defined and condemned them³ does not, of course, prevent the leets from continuing to punish them at common law. It is not easy to distinguish the three very precisely—indeed the terms do not appear to be mutually exclusive—but speaking very generally, we may say that an ingrosser buys up goods (especially corn growing in the fields) before they start to market, a forestaller buys them up when they are on their way to market, a regrattor buys them up in the market itself after they have arrived. In each case the object is to "make a corner," get control of the market, and enhance prices. Is not all this a matter of private right or wrong? It may be such in our opinion, but it was not such in the opinion of any mediæval or early-modern lawyer; for he lived in a world where markets were small, where supplies could not readily be brought from outside, and where starvation was never very far from the majority of the king's liege subjects—who could not be allowed to starve so long as the king needed soldiers or the commonwealth defence. Powell remarks that in his time (c. 1642) "these monopolists began to swarm like the frogs of Egypt," until the parliaments of Charles I. took up the task of exterminating them.

(f) *Inmates and Cottagers*. These are two classes of paupers who, "being poore and not able to maintain themselves," are likely to become chargeable to the community (in this case the parish). Inmates, or "inmakes" as they are called in the *Liverpool Municipal Records* and the *Manchester Court Leet Records*,⁴

¹ The case of *E. v. Forby* showed scolds punishable in leets as common nuisances.

² Cf. *Stat. West. I.*, c. 33.

³ Cf. especially 5-6 Ed. VI., cap. 14, which gives full definitions of the terms.

⁴ Cf. note in *Manchester Court Leet Records*, Vol. I., p. 197. Prof. Skeat connects the word with A.S. *geinaca*.

are lodgers in another man's house. Cottagers are dwellers in hovels of their own : they are defined by Sheppard as "such as build new, or convert old houses into new, not laying four acres of land to them, and such as divide and multiply houses that become hurtfull to the place by overpestering it with poore."¹

(g) *Usurers*, concerning whom Sheppard says: "If any be a usurer and take more for the lone of money than his own again, this is an offence against the common law."²

§9.—Evil Trade Practices: Frauds upon the King's Subjects within the Leet.

The rights and duties of the leets in the matter of the regulation of industry and commerce are many and various. The right to hold the assizes of bread and ale is, as we have seen, next to the right to take the view of frankpledge, the most distinctive mark of leet jurisdiction. In these and in similar affairs the inquisitorial powers of the leet jury admirably adapt it to the task of searching out the subtle and elusive deceits of trade, and the court leet appears to be one of the chief instruments by means of which a manor, and still more a borough, maintains its economic privileges. We have just noted how among evil persons are included such pests as monopolists and usurers: they are to be suppressed altogether. We are now to note how, even in the case of necessary and honourable callings, evil practices may exist which, if they are discovered, call for presentation and punishment. It may be remarked that most of these evil practices in course of time came in for statutory prohibition, but, as Powell observes in the case of the regulation of victuallers, "the power of a leet is not abridged by any of these statutes, but rather declared and explained," to which Sheppard (apropos of monopolists and usurers) adds: "In these and such like cases the penalty of the statute cannot be imposed, for stewards have no power by the statutes, but it is punished here as an offence at the common law before the statute, which doth remain still; and for these the offender is to be amerced."

¹ Sheppard *Court Keepers' Guide*, p. 44. The requirement of four acres was statutory: Cf. 31 Eliz., cap. vii., § 1. The danger from swarming vagabonds became so great during the sixteenth century that legislation had to deal with the whole question of pauperism frequently and fully. Cf. Fowle *The Poor Law*.

² This mediæval prohibition of the taking of interest for money had long before the sixteenth century been evaded so systematically as to be obsolete. Legislation, however, continued to attempt to define the limits of moderate interest and to treat as heinous all exactions beyond the limit. Thus, for example, "an act against usury," 1624 (21 Jac. I, cap. 17), forbade the payment of more than eight per cent. The usury laws were not completely repealed till 1854 (by 17 and 18 Vict., cap. 90). For the whole question see Ashley *Economic History*, and Cunningham *English Industry and Commerce*.

Among the evil practices of the more general kind which the leet is to find out and suppress are (a) *violations of the assize of bread and ale*;¹ (b) *sale of corrupt victuals and drink* "not wholesome for man's body"; (c) *the charging of excessive prices by vendors*, e.g., "if butchers, victuallers, or other persons conspire, covenant, promise, or swear not to sell victuals but at certain prices agreed on between them";² (d) *the conspiring together of labourers*, as "if any labourers conspire and binde themselves to doe but such and such work, or so much, or in such a manner, and not to end what another has begun."³

As to the evil practices specially associated with particular occupations, the following (classified alphabetically under the occupations) are the principal heads enumerated. The jurors are to present, and the court to punish:—

(e) *Alehouse keepers* for selling liquor without licence, for allowing drunkenness, for permitting visitors to stop on their premises too long, for charging too high a price, for supplying corrupt liquor, for using unsealed measures, for making horsebread in a town which has its authorised baker;⁴ (f) *Butchers* for selling corrupt meat,⁵ or inflated meat, for killing bulls unbaited,⁶ or calves under five weeks old, for using the craft of a tanner, for

1 The regulation of the prices of bread and ale had been in Norman and Angevin times a matter of royal prerogative. The kings exercised their authority by means of ordinances and through the agency of an official called "the clerk of the market of the king's household." More permanent regulations were, however, introduced in the form of a sliding scale by a statute of uncertain date, the *Assisa Panis et Cerevisie*, usually quoted as 51 Hen. III., stat. 1 (1266). As to bread, the following was the tariff—to understand which the reader must remember that coins, which at that time were all of silver, were both money and weights: £1 = 240 pence, = 240 silver pennies, = 240 pennyweights, = 1lb. troy (12 oz.)—

When wheat = 1/- the qr., the farthing loaf must weigh £6/18/0.

" " = 1/8 " " " " £4/10/8.

" " = 20/- " " " " £0/6/8½.

and so on. As to ale—which, by the way, was, until Henry VII.'s time, made without hops, and so had to be drunk fresh—it may be sufficient to say that when barley was 2/- the quarter, its price was to be one penny the gallon. This assize of bread and ale, though much modified by later legislation (e.g., 8 Anne, cap. 19), was not completely repealed till 1863 (S.L.R. Act, 26-7 Vict., cap. 125). For the history of the assize, see Cunningham *English Industry and Commerce*, Vol. I., especially appendix A., where a scale of Henry II.'s time is given.

2 The details of prices were frequently regulated by statute, as also were the penalties for extortion. Cf. the *Statute of Labourers* (23 Ed. III., cap. 6): "Carnifices, piscenarii, hostellarii, brasatores, pistores, pulletarii et omnes alii venditores victualium quorumcunque teneantur hujusmodi victualia vendere pro pretio rationabili, habita consideratione ad pretium quo hujusmodi victualia in locis propinquis venduntur." The penalty assigned was double the price charged. Two hundred years later (by 2 and 3 Ed. VI., cap. 15) it was fixed at rates obviously intended to be annihilative, viz., for the first offence, £10 or twenty days imprisonment: for the second, £20 or the pillory; for the third, £40 or the pillory and loss of an ear. Cf. also stat. 25 Hen. VIII., cap. 2.

3 Sheppard *Court Keepers' Guide*, p. 56. Conspiracy as a common-law offence was in course of time completely overshadowed by conspiracy as a statutory offence. For the series of labour statutes from 1349 onwards, see Cunningham *English Industry and Commerce*. The statute 2 and 3 Ed. VI., cap. 15, with its ruinous amendments, applied to labourers as to vendors.

4 As to horsebread, cf. also statutes 32 Hen. VIII., cap. 41, and 21 Jac. I., cap. 21.

5 Cf. also stat. 51 Hen. III., stat. 6.

6 Powell's entry runs: "If any butcher shall kill and sell the flesh of any bull unbaited . . . it is presentable."

injuring the hides of cattle slaughtered; or for supplying rotten hides to curriers; ¹ (g) *Cooks* for supplying unwholesome food; ² (h) *Curriers* for using ill-tanned leather, for gashing leather in shaving it, for currying in houses other than their own, for practising tanning or shoemaking in addition to their own art; (i) *Maltmakers* for mingling inferior malt with good, for selling malt insufficiently rubbed and fanned, for allowing insufficient time in the making of malt—they should allow seventeen days in the summer and three weeks all the rest of the year; ³ (k) *Millers* for using deceit, for changing the grain sent them to grind, for charging excessive toll—they should be content with “the 20th or 24th grain according to custom and according to the strength of the water”; ⁴ (l) *Shoemakers* for using bad leather, or for selling shoes on a Sunday”; ⁵ (m) *Tanners* for not sufficiently tanning and drying their leather, or for practising the trades of currier, cordwainer, or butcher; ⁶ (n) *Vintners* for selling wine without licence, or for charging excessive prices.⁷

§10.—Justice, Police, and Defence: the Protection of the King's Subjects within the Leet.

The leet jurors have upon their hands the responsible task of seeing that (a) *the officers of the leet*—constables, bailiffs, and the rest—perform their duties, not only to the lord, but also to the king's subjects within the leet, by keeping the peace, by arresting offenders, by giving effect to the decisions of the court, and so on: from this there flows the further responsibility of seeing that (b) *watch and ward* are duly kept; for the organization of these is part of the constables' work. “The watch,” says Kitchin, “ought to begin at the feast of Ascension and ought to be held till Michaelmas all the night from the setting of the sun to the rising, and in every city six shall be at every gate, and in every town they ought to watch twelve men, and in every village six men or four according to the number of the inhabitants of the village; and if any stranger be arrested in the watch, he shall be kept until the morning, and if they find suspicion in him, he

1 Cf. also 5 Eliz., cap. 8, and 1 Jac. I., cap. 22.

2 Cf. also 51 Hen. III., stat. 6: “They shall enquire of cooks that seethe flesh or fish with bread or water or any otherwise that is not wholesome for man's body.”

3 Cf. also statute 2 and 3 Ed. VI., cap. 10, and many subsequent statutes.

4 Kitchin *Jurisdictions*, p. 23.

5 Sheppard *Court Keepers' Guide*, p. 56.

6 Sheppard *Court Keepers' Guide*, pp. 56-6, and cf. also statute 1 Jac. I., cap. 22.

7 Sheppard *Court Keepers' Guide*, p. 56, and cf. also statutes 7 Ed. VI., cap. 8, and 12 Car. II., cap. 28.

shall be delivered to the sheriff, and if no suspicion be in him he shall go free; and if any will not obey the arrest, they ought to raise hue-and-cry, and for arresting such a stranger none shall be punished."¹ The keeping of ward by day involves the provision by every man, between the ages of fifteen and sixty years, of arms suitable to his condition, and also the readiness of every such liege subject of the king to come out equipped at any moment to defend his town or village or to follow the cry.² In addition to this the jurors have to take care that (c) *the necessary instruments of justice* for the punishment of offenders are provided and are kept in good repair: these are stocks, pillory, tumbrel, and (not so frequently mentioned) cucking-stool or ducking-stool.³

§11.—By-laws: the Enforcement of the Will of the King's Subjects within the Leet.

Finally "the jury in this court may make by-lawes and enquire of the breach of them."⁴ Of course the usual conditions must be observed: the by-laws must not conflict with the law of the land, or be repugnant to common sense, for "such by-lawes as are against law and reason are void."⁵ Further, by-laws "are not binding of common right except as to matters properly cognisable in the leet."⁶ Some such restriction is obviously necessary unless the leet is to be allowed to cover with its jurisdiction the whole field of jurisprudence, ethics, and applied divinity.

Such are the matters with which at common law the court leet, in the opinion of the guide-writers, is competent to deal fully. It will have been observed, however, by those who have consulted the footnotes appended to the various sub-headings of this section, that in all directions statute law has encroached upon the common law. While nominally defining and explaining, it has been really altering and developing it, and has been tending, moreover, to transfer executive power to local

¹ *Kitchin Jurisdictions*, p. 99: also cf. the *Statute of Winchester* (13 Ed. I., stat. II.) cap. 4.

² Cf. *Assize of Arms*, 1181 (*Stubbs Select Charters*, p. 183), and *Statute of Winchester* (13 Ed. I., stat. II.) cap. 6.

³ In the case of *Davis v. Lowden* it was held that stocks are to be provided by the inhabitants, but pillory and tumbrel by the lord of the leet.

⁴ *Sheppard Court Keepers' Guide*, pp. 19 and 60: also cf. *Kitchin Jurisdictions*, pp. 84 and 91.

⁵ *Sheppard Court Keepers' Guide*, pp. 208-9, where a whole chapter (No. 39) deals with the question of by-laws: also cf. *Kitchin Jurisdictions*, pp. 168-9.

⁶ *Scriven Copyhold*, II., 859. Cf. the *Chamberlain of London's case*, *Jeffrey's case*, *Gateward's case*, and the case of *Abbot v. Weekly*.

authorities whose competence to enforce statute law is less doubtful than is that of leets. As soon as the lawyers, backed by the superior courts, come to the decision that a court leet can enforce a statute only if the statute either does but re-affirm the common law, or does in express words give jurisdiction to the leets, so soon is leet jurisdiction reduced to comparative insignificance in the judicial system.

CHAPTER XIII.—THE JURISDICTION OF THE COURT LEET.

(IV.) MATTERS FULLY DETERMINABLE UNDER STATUTE.

§1.—Introductory.

“This court,” says Sheppard, concerning the leet, “cannot meddle with any offence against a statute law, except the statute give it power so to do; and yet, if it were an offence before against the common law, that doth still remaine.”¹ He is stating the accepted rule of his day, but the question arises, when did this rule become established? The second part of the rule is a concession to the lords of leets, and is rather of theoretical interest than of practical importance, because whenever statute law, with its superior precision and efficiency, took over common-law offences, they tended to survive, as common-law offences, only in legal memory. The first part of the rule is, however, a real and serious restriction, operating effectively to limit leet jurisdiction, preventing it from developing by the process of adaptation to environment, stamping it as mediæval and archaic. When, then, was this restriction first recognised? It is obvious that when the *Assize of Clarendon* was issued by Henry II., there was neither need for, nor room for, such a rule. For, on the one hand, there was no local rival to sheriff and steward, and, on the other hand, there were no statutes. So long as tourn and leet remained the sole local police courts, and so long as the ordinances of the central government were either of the nature of executive orders,² or mere declarations of the common law,³ the rule could have no meaning, and, indeed, no

¹ Sheppard *Court Keepers' Guide*, p. 11.

² E.g., the *Assizes of Clarendon* and *Northampton*.

³ E.g., *Magna Carta*, the *Statute of Winchester*, and the two *Statutes of Westminster*.

existence. But when, in Edward I.'s reign, legislation true and proper commenced, and when simultaneously the office of justice of the peace began to establish itself, the conditions were wholly changed.¹ It became necessary to distinguish between common law and statute, and between the spheres of the old courts and the new. It is fairly evident, I think, that both king and commons favoured the new, while feudal lords and privileged corporations maintained the old. Thus, on the one side, the *Rolls of Parliament*, under date 1344, contain a successful petition from the commons that no new articles of enquiry shall be allowed to tourns and leets;² on the other hand, the same rolls, under date 1406—i.e., during a period of baronial dominance—include the record of a concession wrung from the harassed and impotent Henry IV., viz., that tourns and leets may be empowered to enforce that most oppressive of mediæval enactments, the *Statute of Labourers*.³ Nevertheless, retrogressive though the effect of the concession may have been, it is not without significance that the concession itself should have been asked for, and not merely taken without form or ceremony: It marks a tacit recognition of the principle that the novel enactments of statute law are, apart from express permission, outside the competence of the old courts of tourn and leet. It implies the existence of new courts—the assize courts of the judges, the sessions of the justices of the peace—whose duty it is, in the absence of specific regulation, to safeguard and enforce the new laws. Even here, then, in the record of 1406, we can discern evidence of the supersession of the sheriff and the steward by the justices, of the tourn and the leet by the courts of the judges and the magistrates, and of the common law by statutory legislation. The *Year Books* show us the rule fully established, viz., that leet and tourn can enquire of no purely statutory offence except by express enactment.⁴ Hence, when, at the beginning of the sixteenth century, that lion of indiscriminate justice and injustice,

1 But, of course, the change was not immediately evident. For example, Britton regards *Mortmain* as enquirable in leet, and Kitchin accepts his authority for it. (Kitchin *Jurisdictions*, pp. 46 and 77.)

2 *Rotuli Parliamentorum*, II., 148, 149, 165: "A n're Seign' le Roi prie sa commune q. les nouvelles querrez queux si durement p. outraieuses fyns et raunceons et autres grevances determinent plus a destruction de poeple q'en amendement soient repellez et cessez." The petition is granted.

3 *Rotuli Parliamentorum*, III., 602: "Et qe en chescune lete, soit il en mayn du roy ou d' autre qeconq' liege du roy, soient un foltz p. an toutz les laborers et artificers demurantz dedeinz le dit lete sermentez de servir et prendre pur son service selonc les ditz estatutz," etc., etc. The reply is given, "Le roy le voet."

4 Cf. a case respecting the *Statute of Liveries*: "Le vic. poet inquire en son torne dassise de paine et servics et de comen nusanccs et hujusmodi, mes nemy de prize de liveries contra statutum nec hujusmodi q. serr. don. per statut sinon q. lestat. done ceo expressement al torne ou leete." Brooke *Abridgment*, s.v. *Lets*.

Henry VIII., wished to use the inquisitorial machinery and the summary procedure of the leets for his own ends, he took care to say so in specific statutory terms. His successors followed his example, and many new statutory duties of a trivial kind were definitely assigned to the leets (usually, however, in co-ordination with the sessions of the justices) during the two ensuing centuries. Clear though the rule thus became, nevertheless, from time to time, encroachments on the part of the leets into statutory regions not specifically placed within their sphere of influence necessitated judicial re-affirmation of the principle. For example, with regard to the *Statute of Apprentices* of 1562¹ "the bailiff of Westminster levied money upon several persons upon presentment in the leet there for using trades, not having been apprentices, and upon complaint made of this against the bailiff it was agreed by the court that the statute of 5 Eliz. (cap. 4, § 39) does not give the leet any power to proceed thereupon, and directed that those aliens that so use trades, not having been apprentices, shall be presented at the sessions or in B. R."² So much for the general principle.

We may now proceed to make note of the statutes which specifically assign duties to courts leet. As soon as we begin to do so, however, we are confronted by a new difficulty. For just as in the last chapter we saw that many common-law rights have been re-enforced by statute, so here we shall find that many statutory duties which are imposed upon the leets appear to be merely venerable common-law duties writ large. For example, "not repaying highways" is, as a common nuisance, an offence punishable in leets at common law:³ it is also made a statutory offence, cognisance of which is specifically assigned to leets, by an act of Mary's reign.⁴ Much the same may be said concerning the common-law offence of "corrupting waters" and the statutory offence of corrupting them by watering hemp in them.⁴ But when, as in these cases, statute law steps in and confers upon the leets powers which, apparently, they already possess, it will be found that there is always some feature—a sharpening of an old definition, an extension of an existing obligation, a particularisation of a vague general rule, an imposition of a new and exemplary penalty—which marks a new departure. The leets are not mentioned without cause. We may, then, follow the

¹ *Viner Abridgment*, s.v. *Court Leet*.

² *Sheppard Court Keepers' Guide*, p. 13.

³ 3 and 3 P. and M., cap. 8, confirmed and extended by 8 Eliz., cap. 18, and 18 Eliz., cap. 10.

⁴ 28 Hen. VIII., cap. 17.

guide-writers in regarding "specific mention" as the test. Duties definitely assigned to leets by statutes are statutory, even if at common law the leets have had the power to perform them before. If the leets enforce—as indeed they do—other and older statutes (e.g., the *Statute of Winchester*), they do so because in fact from days anterior to the triumph of the justices of the peace they have always done so, and because in theory such statutes are merely declaratory and explanatory of the common law. In the following section are given, in order of time, the most important of the matters which have been placed by statute within the cognisance of the leets for enquiry, presentment, and punishment.

§2.—Statutory Duties imposed on the Courts Leet.

The duties in question relate to the following matters:—

(1) THE TRACING OF HARES : BY 14-15 HEN. VIII., CAP. 10 (1523).¹

"Forasmuch as our sovereign lord the king and other noble-men of this realm of England before this time have used and exercised the game of hunting of the hare for their disport and pleasure, which game is now decayed and almost utterly destroyed, for that divers persons in divers parts of this realm by reason of the tracing in snow have killed and destroyed and daily do kill and destroy the same hares by ten, twelve or sixteen upon one day to the displeasure of our said sovereign lord the king and other noblemen of this his realm be it enacted that no person or persons from henceforth trace, destroy, and kill any hare in the snow with any dog, bitch, bow, nor otherwise, and that the justices of peace within every shire at every sessions of the peace and stewards of leets shall have full authority and power to enquire of such offenders." The penalty fixed by the statute is 6/8 for each hare, to go (a point worthy of note) from the justices to the king, from the stewards to the lords of the leets.

(2) THE DESTROYING OF CROWS : BY 24 HEN. VIII., CAP. 10 (1533).²

Owing to the destruction of crops by "choughs, crows, and rooks," every occupier of land within a leet is required to do his best to exterminate these pests, especially by the laying down of crow-nets at breeding time. Neglect of this duty—notification of which is to be made by the steward of every leet in his

¹ Repealed 1-2 Will. IV., cap. 82.

² Partly and temporarily repealed by 8 Eliz., cap. 16 : finally repealed 19 and 20 Vict., cap. 64.

charge—incur a fine of 10/-, half to go to the crown, half to the lord of the leet.

(3) THE WEARING OF SUITABLE APPAREL: BY 24 HEN. VIII., CAP. 13 (1533).¹

This statute of Henry VIII., after repealing all former statutes made against excess of apparel, defines “what apparel men of all degrees, vocations, and functions are allowed and what prohibited to wear.” Thus “none under the degree of an earl may use sables.” Most of the distinctions, however, are based on wealth, *e.g.*, £40 cannot use velvet in caps; £20 cannot use silk in hose, and so on. The penalty for breach of the statute is 3/4 for each day on which the prohibited material is worn.² As to these offences: “It shalbe lawful to the justices of peace in theyr sessyons, the shirife in his turne, the steward in any lete or lawedaye, the aldermen in their wardes, and to all other persons having auctorite to enquire of bloodshede and fraies, to enquire of every of the sayd offences.”

(4) THE BREEDING OF HORSES: BY 32 HEN. VIII., CAP. 13 (1540).³

In order to improve the breed of horses it is ordained that no stallions shall be put to pasture on common or in forest or chase unless they are “fourteen handfuls high” (in certain specified counties fifteen handfuls), and also that no horses “infected with scab or mange” shall be allowed to be at large. To ensure the enforcement of these regulations every common is to be “driven” once a year within the fortnight after Michaelmas, and offences under the statute “shall be inquirable and presentable before the steward in every leet as other common annoyances be.” The justices of the peace, of course, have co-ordinate jurisdiction in the matter of punishment; but they lack the administrative machinery for driving the commons, and can merely compel the leet officials to do their duty by inflicting a pain of 40/- for its neglect.

¹ Extended by 1 and 2 P. and M., cap. 2, and 8 Eliz., cap. 11. Repealed 1 Jac. I., cap. 25, § 45. For earlier regulations concerning apparel, cf. statutes 11 Ed. III., cap. 4; 37 Ed. III., cc. 8-14; 3 Ed. IV., cap. 5; 22 Ed. IV., cap. 1; 1 Hen. VIII., cap. 14; 6 Hen. VIII., cap. 1; 7 Hen. VIII., cap. 6. Had these or any of them been enforced by the leets?

² The statute 1 and 2 P. and M., cap. 2, made further restrictions on the use of silk, and increased the penalty to the then enormous sum of £10 for each day of use. What was the good of imposing so heavy an amercement upon a person who, *ex hypothesi*, was worth less than £20? Probably it was an indirect way of ensuring that he should be incarcerated for an indefinite period in a debtors' prison. Why should his incarceration have been desired? Because in the sixteenth century, as in the middle ages, ordinary clothing was what livery or uniform is to-day—a mark of position, rank, occupation, service. For a labourer to wear silk was an act of rebellion against society. What would the Universities to-day do to an undergraduate who should persist in wearing the scarlet of a doctor?

Repealed 19 and 20 Vict. cap. 64.

(5) THE KEEPING AND USING OF CROSS-BOWS AND HAND-GUNS :
BY 33 HEN. VIII., CAP. 6 (1541).¹

"For that diverse malicious and ill-disposed persons did shamefully commit diverse detestable murthers, robberies, felonies, riots and routs with crossbowes, little short handguns, and hagbuts to the great fear and danger of his Majestie's subjects," the common carrying about and using of those lethal weapons is prohibited to persons with an income of less than £100 a year, and "it shalbe lawfull to all justices of the peace in their sessions, and to all stewards and bailiffs in their severall leets and lawdaies to inquire, heare, and determine every such offence." The penalty is fixed at £10. Moreover—and this is a very interesting matter—if any jury "charged to inquire for the King our Sovereign Lord before any justices of the peace or stewards of leetes or lawdayes" wilfully conceal any such offences, a second jury "of twelve or more good and substantiall honest persons" is to be impanelled "to inquire of every such concealement." If it is held that there has been wilful concealment, each of the first jurors is to forfeit 20/-, which, in the case of the leets, is to go half to the lord and half to the informer.

(6) THE NEGLECTING OF ARCHERY AND THE PLAYING OF UNLAWFUL GAMES : BY 33 HEN. VIII., CAP. 9 (1541).²

In order to arrest the national danger due to the decay of the old English skill in the use of the long bow, all able-bodied male subjects of the king (except clergy and judges), between the ages of seven years and sixty years, are to have bow and arrows and are to practise the use of them, under penalty of 6/8 for every month of neglect. Every town, moreover, is to provide and maintain butts, under penalty of 20/- for every three months of neglect. Further, in order to destroy rival attractions and to prevent the meeting of lewd rogues for seditious purposes, "it is also enacted . . . that no manner of artificer or craftsman of any handicraft or occupation, husbandman, apprentice, labourer, servant at husbandry, journeyman, or servant of artificer, mariner, fisherman, waterman, or any servingman, shall . . . play at the tables, tennis, dice, cards, bowls, clash, coyting, logating, or any other unlawful game" under penalty of 20/- for each offence (except at their masters' houses under certain rigid conditions). Persons who keep unlicensed gaming-houses,

¹ Modified by 4 and 5 P. and M., cap. 3. Repealed by 1 and 2 Will. IV., cap. 82, § 1.

² Partially repealed by 3 Geo. IV., cap. 41; 8-9 Vict. c 109; and 26-27 Vict. c 125 (S.L.R. Act, 1863); but still unrepealed as to some of the regulations concerning gaming.

bowling-alleys, etc., are liable to a penalty of 40/- for each day of their offence. Constables and bailiffs are to search every month for offenders and are to present them to justices of the peace or to the stewards of leets.¹

(7) THE WATERING OF HEMP OR FLAX: BY 33 HEN. VIII., CAP. 17 (1541).²

Hemp and flax are to be watered in pits or ponds specially provided for the purpose; if they are watered in rivers, streams, or common ponds where cattle drink, a penalty of 20/- may be recovered, "the one half thereof to be to our sovereign lord the king and the other half thereof to be to the party grieved, or to any other the king's subjects that will sue for the same forfeiture in any court of record, leet, or lawday."

(8) THE MAKING OF MALT: BY 2-3 ED. VI., CAP. 10 (1548).³

Unlawful practices are described, the proper methods are laid down and, it is added, "the justices of the peace in every of their sessions, and also the steward in every leet," together with "the bailiffs and constables of every borough or market town or other town," shall have power to enquire into offences and to punish offenders.

(9) THE CONSPIRING TOGETHER OF VICTUALLERS AND CRAFTSMEN BY 2-3 ED. VI., CAP. 15 (1548).⁴

Butchers, brewers, bakers, poulterers, cooks, costermongers, and fruiterers who, "not contented with moderate and reasonable gain," conspire together not to sell but at certain prices; or artificers, handicraftsmen, and labourers who similarly agree to

¹ The maintenance of archery was one of the pressing problems of the sixteenth and early seventeenth centuries. We must remember that during this period, in spite of improvements in fire-arms, the long-bow in the hands of a skilled archer remained a weapon far superior in precision and deadliness to its igneous rivals, which, however, continued to oust it because their use required so much less practice and careful training. Tudor writers lament the decay of archery. Thus Ascham in a well known passage of his *Toxophilus* lifts up his voice; while Harrison in his *Description of England* (1577) utters the following vigorous complaint: "Certes the Frenchmen and Rutters deriding our new archerie in respect of their corselets will not let [refrain] in open skirmish, if anio lelaure serve, to turne up their talles and crie 'Shoote English,' and all because our strong shooting is decayed and laid in bed. But if some of our Englishmen now lived that served King Edward the Third in his warres with France, the breech of such a varlet should have been nailed to his bum with one arrow, and another fethered in his bowels before he should have turned about to see who shot the first." In spite, however, of literary laments and statutory enactments, archery continued to decay. Mr. Leader, in his *Records of the Burgery of Sheffield* (1897), thinks that it was the Civil War of the seventeenth century and the subsequent turmoil which rendered archery and the regulations concerning it obsolete: in Sheffield, it appears, the butts were regularly repaired up to 1642, but not afterwards. This may, however, have been a mere coincidence; for in the *Preston Court Leet Records* references to repair of the butts occur till 1697, and in those of Manchester till so late a date as 1781.

² Repealed by 26-27 Vtct., cap. 125 (S.L.R. Act, 1863).

³ Repealed by 26-27 Vtct., cap. 125 (S.L.R. Act, 1863).

⁴ Repealed by 6 Geo. IV., cap. 129.

work only for certain wages, to finish no work which another has begun, to limit the amount of labour which they will perform during the day, or the hours at which they will work, are to be subjected to the destructive penalties of £10 (or twenty days imprisonment on bread and water) for the first offence, £20 (or the pillory) for the second, and £40 (or the pillory and loss of an ear) for the third. It is enacted "that all and singular justices of assize, justices of the peace, mayors, bailiffs and stewards of leets at all and every their sessions, leets, and courts shall have full power and authority to inquire, hear and determine all and singular offences committed against this statute and to punish or cause to be punished the offender according to the tenor of this statute."

(10) THE RETAILING OF WINES: BY 7 ED. VI., CAP. 5 (1552).¹

No person shall retail wine except in city, borough, port, corporate or market town; no person shall do so without licence; no person shall charge more than 4d. a gallon for Rochelle wines, 8d. a gallon for Gascon wines, and 1/- a gallon for any other wines; and "the justices of peace of every shire or county, city and town corporate in their several sessions, and the steward in every leet and the sheriff in his tourn,"² and every escheator shall have full power and authority by this present act to enquire by the oaths of twelve lawful men of all and every offence and offences perpetrated or done contrary to the form of this statute."

(11) THE REPAIRING OF HIGHWAYS: BY 2-3 P. AND M., CAP. 8 (1555).³

Every labourer is to give gratuitously every year four eight-hour days' work on the highways, the dates of which will be announced in church.⁴ Every holder of "a carve of land or pasture" shall provide a cart with two men for the same purpose of mending the roads. Two "surveyors" are to be appointed at Easter each year to superintend the work; and "the steward of every leet or lawday shall therein have full power and authority to enquire by the oaths of the suiters of all and every the offences that shall be committed within the leet or lawday against every point and article of this estatute and

¹ Modified by 12 Car. II., cap. 25; repealed by 19-20 Vict., cap. 64.

² The inclusion of the sheriff's tourn in this list is noteworthy.

³ Extended by 5 Eliz., cap. 13, and 18 Eliz., cap. 10; repealed by 7 Geo. III., cap. 42, § 87.

⁴ The act of 5 Eliz. (1563) increased the number of days to six per annum.

to assess such reasonable fines and amerciaments for the same as shall be thought meet by the said steward."¹

(12) THE TAKING OF MUSTERS : BY 4-5 P. AND M., CAP. 3 (1557).²

This act—which (recognising the fact of the decrease of archery and the increase of gunnery) allows some exceptions to Henry VIII.'s restrictions concerning "crossbows and hand-guns"—provides that persons who refuse "to come to musters," *i.e.*, to perform due military service, shall suffer a penalty of a 40/- amercement or ten days imprisonment, and further enacts that "all justices of assises in their circuits and all justices of peace within the limits of their commission in their assizes and sessions, and stewards of leets, lawdays, and liberties, at their leets and lawdays, shall and may from time to time enquire, hear, and determine every of the said offences committed or done contrary to this act within the precincts of their commission, leet, or liberty."

(13) THE PRESERVING OF FISHERIES : BY 1 ELIZ., CAP. 17 (1559).³

No person shall destroy the fry of fish, shall kill certain fish out of certain seasons, shall use nets of a mesh less than 2½ inches, or shall take trout under 8 inches in length, pike under 10 inches, barble under 12 inches, salmon under 16 inches; and "the lord of every leet within this realm of England and Wales or the dominions of the same, shall have full power and authority to enquire of all the offences contrary to the purport, tenor, and form of this estatute, within the precinct of their said leet; such enquiry to be had in manner and form, and after such sort as common amerciaments or other things enquirable in their court leet have been lawfully used and accustomed to be had and made." There is a further notable provision in this statute—which is one of a series whose object is to maintain the English fisheries as a school of seamanship—*viz.*, that if stewards fail to mention this new duty in their charges, they shall forfeit 40/-; and, if juries conceal offences, second juries shall be impanelled to enquire into and punish the delinquencies of the first.⁴

¹ The statute 18 Eliz., cap. 10, enacts that "all and every justices of assize, justices of *oyer and terminer*, justices of the peace in the sessions, and stewards of leets and lawdays in their leets and lawdays shall hear and determine," etc., etc.

² Repealed by 26-27 Vict., cap. 125 (S. L. R. Act, 1863).

³ Partly repealed by 18 Geo. III., cap. 33, and 24-5 Vict., cap. 109; fully repealed by 26-7 Vict., cap. 125 (S. L. R. Act, 1863).

⁴ The regulations for the impanelment of the second jury follow exactly the lines laid down, in the matter of crossbows and handguns, by 23 Hen. VIII., cap. 6.

(14) THE PROCLAIMING OF THE SUPREMACY OF THE CROWN: BY
5 ELIZ., CAP. 1 (1562).¹

This "Act for the Assurance of the Queen's Royal Power over all Estates and Subjects within her Dominions" apparently gives no new jurisdiction to the leets. It merely requires that "this act shall be openly read published and declared at every quarter sessions by the clerk of the peace, and at every leet and lawday by the steward of the court."²

(15) THE WEARING OF WOOLLEN CAPS: BY 13 ELIZ., CAP. 19 (1571).³

This act, which is passed not for sumptuary reasons, but to maintain the great staple industry of England, provides that "every person above the age of seven years shall wear upon the Sabbath and holyday (unless in the time of their travels out of their towns, hamlets, etc.) upon their head a cap of wool, knit, thicked, and dressed in England, made within this realm, and only dressed and finished by some of the trade of cappers, upon pain to forfeit for every day not wearing three shillings four pence, except maids, ladies, gentlewomen, noble personages, and every lord, knight and gentleman of twenty marks land and their heirs, and such as have born office of worship in any city, borough, town, hamlet, or shire; and the wardens of the worshipful companies of London."⁴ Offences against the act are enquirable in the leets, and of the penalty of $\frac{3}{4}$ a day for every breach, half is to go to the lord of the leet and half to the poor. The specific mention of the leet occurs in the clause: "And further be it enacted by the authority aforesaid that justices of assize in their circuits, justices of peace in their sessions, shirifes in their turnes, stewards in their leetes and lawdayes; maiors, shirifes and bailifes of cities, boroughs and townes corporat in their courts shall and may inquire, heare and determine from time to time all and every the said offences," etc.

(16) THE PRESERVING OF PHEASANTS AND PARTRIDGES: BY
23 ELIZ., CAP. 10 (1580).⁵

Every person who unlawfully takes a pheasant or partridge shall suffer a penalty of 20/- in the one case and 10/- in the other;

¹ Repealed 9-10 Vict., cap. 59, § 1.

² Powell, however, quotes this statute in support of a preposterous claim that *præmunire* is enquirable, though not punishable, in leets. The main provision of the statute reads to the effect that if any extol or set forth the authority of the Bishop of Rome against the form of this statute he runs into a *præmunire*.

³ Repealed 89 Eliz., cap. 18.

⁴ This is the summary given by Ruffhead, Vol. II., 600. He does not print the statute *in extenso*.

⁵ Repealed 1-3 Will. IV., cap. 32.

and “the justices of assizes in their circuits and justices of the peace in every shire, county and town corporate within this realm in their sessions within their several limits of their commission, and stewards of leets, liberties and lawdays within their several jurisdictions,” shall enquire into offences and punish offenders.

(17) THE BUILDING OF COTTAGES AND THE HARBOURING OF INMATES: BY 31 ELIZ., CAP. 7 (1589).¹

No person shall erect a cottage without attaching to it four acres of land, except in towns, or near mines and quarries for the workmen therein, or near the sea and navigable rivers for sailors, and under a few other exceptional circumstances. The penalty for building such a cottage shall be £10, and for “continuing” it 10/- a month. Further, no person shall harbour “inmates”: those who do so shall forfeit 10/- a month. “All justices of assizes and justices of peace in their open sessions and every lord within the precinct of his leet and none others shall have full power and authority within their several limits and jurisdictions to enquire, hear, and determine all offences.”

(18) THE REPRESSING OF DRUNKENNESS: BY 4 JAC. I., CAP. 5 (1607).²

This act, which is intended “to repress the loathsome and odious sinne of drunkennesse,” provides that a person presented for the offence, which is “rightly described to be the roote and foundation of many other enormous sins,” shall either forfeit 5/-, or spend six hours in the stocks. “All offences in this act . . . shall be from time to time diligently enquired of and presented before the justices of assizes in their circuit, justices of the peace in their quarter or ordinary sessions and before the mayors, bailiffs or other head officers of every city or town corporate who have power to enquire of trespasses, riots, routs, forces, and such like offences, and in every court leet.”

(19) THE BAKING OF HORSEBREAD: BY 21 JAC. I., CAP. 21 (1624).³

This act—the last act to place any new matter within the jurisdiction of the leet—prohibits ostlers and innholders from making horsebread except in places where there are no bakers. “The justices of assize, justices of *oyer and terminer*, justices of the peace in every shire, liberty or franchise within this realm,

¹ Repealed 16 Geo. III., cap. 33.

² Repealed 9 Geo. IV., cap. 61.

³ Repealed 19-20 Vict., c. 64.

sheriffs in their turns, and stewards in their leets and lawdays shall have full power and authority "to enquire into offences and punish offenders.

(20) THE READING OF THE RIOT ACT: BY 1 GEO. I., STAT. 2, CAP. 5 (1715).¹

One clause—still in force—of this famous *Riot Act* requires that the act "shall be openly read at every quarter sessions and at every leet or lawday." Apart from this, the leet has nothing to do with the act or its enforcement, *i.e.*, nothing beyond its ordinary common-law duty of presenting and punishing breaches of the peace.

§3.—Other Statutory References to the Courts Leet.

A few other statutory references to the courts leet may here be mentioned, because, though they have nothing to do directly with leet jurisdiction, they serve to illustrate the attitude of the legislature towards it.

(1) *Stat. 1 Jac. I., cap. 5*—still in force—aims at checking excessive charges made to the oppression of the people in "courte leetes or court barons" by stewards, and, further, endeavours to prevent the stewards from defrauding the lords of the leets by keeping for themselves the fines and amercements; (2) *Stat. 14 Car. II., cap. 14*—the notorious *Settlement Law*, repealed in its main provisions by stat. 35 Geo. III., cap. 101—confers powers on the justices which enable them to remove paupers likely to become a burden to the parish. It deliberately passes over the leets as authorities, merely remarking that "the laws and statutes for the apprehending of rogues and vagabonds have not been duly executed, sometimes for want of officers, by reason lords of manors do not keep courts leet every year for the making of them"; (3) *11 Geo. I., cap. 4*—repealed by the S.L.R. Act of 1887—after mentioning that in some boroughs mayors are elected in courts leet, provides that if the courts do not meet to perform the duty of election, the king's bench may issue a *mandamus* to compel them to do so; (4) *Stat. 35 Geo. III., cap. 102, and stat. 55 Geo. III., cap. 43*, both contain allusions to leet jurisdiction in the matter of weights and measures; finally, (5) *50-51 Vict., cap. 55—The Sheriffs Act, 1887*—while abolishing the sheriff's tourn, allows that "notwithstanding the repeal of any enactment by

¹ Still unrepealed, though modified by 7-8 Geo. IV., c. 27, and S.L.R. Acts of 1888 and 1892.

this act, every court leet, court baron, lawday, view of frankpledge, or other like court which is held at the passing of this act shall continue to be held on the days and in the places heretofore accustomed, but shall not have any larger powers, nor shall any larger fees be taken thereat than heretofore, and any indictment or presentation found at such a court shall be dealt with in like manner as heretofore.”

CHAPTER XIV.—THE JUDICIAL PROCEDURE OF THE COURT LEET.

§1.—The Interval for Deliberation—and Refreshment.

In Chapter VIII. we followed the proceedings of the model court leet up to the point at which the steward, adjourning the court till two of the afternoon, said to the jurors: “Go together and enquire ye of the matter of your charge, and when you are agreed I shall be ready to take your verdict.” We have in the succeeding chapters made a somewhat lengthy examination of the subjects into which the jurors are expected to enquire in their retirement. We must now venture (with apologies for intrusion) to pursue them behind the veil, and to watch them as they deliberate in private. They have several hours at their disposal—probably not less than five, if the court has met at the usual time of eight in the morning. But it cannot all be assigned to the administration of justice. Custom and human frailty demand the interjection of one, if not two, meals; and the great mid-day meal, the leet dinner, tends to be a very ponderous and prolonged affair.¹ But, feasting ended, the jurors have plenty to do. They have to weigh, consider, and give a verdict upon all such matters of communal interest, within the wide limits of the charge, as have been brought to their notice, either before or during the session, whether by the officers of the leet, or by the suitors of the court, by their own observation, or even by the vague general gossip of the neighbourhood. They are the duly accredited censors of all the tale-telling and all the

¹ In many places at the present day the eating of the leet dinner is the sole survival of leet jurisdiction, and the only active function performed by the jurors.

scandal of the countryside. In deliberating and in arriving at their verdict they are trammelled by no rules of procedure, by no laws of evidence. They do not summon the accused—who may indeed be entirely ignorant of the fact that he is being accused; they call no witnesses, but depend mainly upon their own personal knowledge or suspicions, or upon the general trustworthiness of their informers; their “verdict” is in form no more than a resolution of a parish council carried by a majority of twelve, but in effect it becomes in due course, “as evangelist” or “as gospel,” immutable for ever. When the jurors have arrived at their evangelical verdicts, and have agreed upon the items of their damnatory gospel, they put them into writing in the form of presentments.

§2.—The Presentments.

If the jurors finish all their enquiries, arrive at verdicts concerning them, turn their verdicts into presentments, and reduce their presentments to writing before two of the clock, then, when the adjourned court meets at that hour, business can be continued and concluded. That they can reasonably be expected, under normal conditions, to squeeze the judicial work of six, or even twelve, months into a few hours, is due to the fact that most of what they have to deal with is well known to them beforehand, and may even have been put into written form in anticipation of the day.¹ Much of what they have to do is routine work, merely reiterative and formal. If, however, the presentments are not ready, the court must be again adjourned to some subsequent day, the date of which is to be fixed by the steward.² We will suppose that the presentments are ready. They are, of course, in English; but that is not the official language.³ To be authoritative they must be in Latin, and to turn them into the legal language is probably beyond the capacity of everyone in the court except (and that doubtfully) the steward. Hence the jurors hand to the steward their presentments in English, and he, to the extent of his ability, translates them into that amazing jargon, the Latin of the law, which would have been almost as unintelligible to Papinian as

¹ Watkins *Treatise on Copyholds* 1825, Vol. II., p. 383, says: “For the most part they [the jurors] generally come ready prepared with them [the presentments] and deliver a copy of them signed by the several tenants to the steward to enter on the court rolls.”

² Sheppard *Court Keepers' Guide*, p. 62.

³ Except during the period of the Commonwealth, under ordinance of Nov. 22nd, 1649, “for turning books of the law into English.” This ordinance, of course, lapsed in 1660.

it is to the jurors themselves.¹ The presentments having thus been duly made and put into proper form, the court has to proceed to deal with them. First, they have to be scrutinised and sorted into two groups. Those (if any such there be) that relate to those graver crimes which are "enquirable only" in the court leet, must be set on one side and treated according to the strict rules laid down in the statutes of the first, third and fourth Edwards.² Two copies of each must be made; one, under the hand of the steward, is to remain with the jury; the other, under the hands, and authenticated by the seals, of the twelve men, is to be handed to the steward, and is by him to be delivered to the justices of the peace, who will see to the arrest and detention of the persons accused, and their presentation for trial to the judges of assize.³ Those presentments, on the other hand, that relate to the minor offences may be dealt with and finished off there and then by a summary process of amercement. There is no pretence of trial. The accused (although as a resiant he is assumed to be in court) is not called upon or listened to. A presentment is more than a mere accusation; it is more than adverse evidence; it is testimony regarded as of the nature of proof conclusive which cannot, except "in some speciall case, as when it doth concern freehold," be challenged or denied.⁴

§3.—The Penalties.

It is necessary under modern conditions that a court with such summary powers—possible instruments of the most galling persecution—shall be strictly limited, not only in the sphere of its jurisdiction, but also in the range of the penalties which it can inflict. The seventeenth and eighteenth century lawyers

¹ Sheppard thus directs the steward respecting the presentments: "Take them and ask" the jurors "whether they be content they shall be altered in form; if they say yes, then take them in English, read them, and amend the forms if need be, and afterwards turn them into Latin." So long as this language rule was actually observed in practice there were thus two versions of the presentments extant, the one the original English version of the jurors, the other the amended Latin version of the steward. This fact has constantly to be borne in mind by those who consult the mediæval court rolls. (Cf. the case of the *Peterborough Court Roll* for 1461, recorded by the late Miss Mary Bateson in the *English Historical Review*, Vol. XIX., pp. 526-8). But the language rule, in spite of the precept and example of the court keepers' guides, was not rigidly observed. It was beyond the powers of most stewards to find Latin equivalents for all the English terms that were employed. Even Kitchin in his model entries has such compromises with strict Latinity as "unus equus coloris grey," and "diversa alla vestimenta, anglice, one smocke, one petticoate, and one shirt"; while actual court rolls show such double or triple compounds as the presentment (found in the records of the leet of the Savoy) of a man "quia tetheravit vaccam apud watermill," or the description (in the Coventry Records) of a tenement as situated "ad finem de le little bochery." In most manors and boroughs from, at any rate, the middle of the sixteenth century the claims of Latin seem to have been looked upon as satisfied if the formal titles and headings were given in that language.

² 13 Ed. I., cap. 13; 1 Ed. III., cap. 17; and 1 Ed. IV., cap. 2. See above, Chap. XI., § 1.

³ Sheppard *Court Keepers' Guide*, p. 21.

⁴ Cf. Pollock and Maitland *Hist. Eng. Law*, II., 642-3.

state a clearly-defined rule on this matter. For example, the steward of the Manchester court leet, in 1788, in his charge to his jurors, says:—"The only power that this court has of enforcing its determinations is by fine and amercement, that is a pecuniary penalty upon the offender; it having no authority to imprison or to inflict any corporal punishment whatever."¹ This rule is, probably, under the circumstances, a good and safe one. The absence of the power to touch a man's body prevents such intolerable encroachments on personal liberty as marked, in earlier days, the similarly irresponsible courts of the Star Chamber and the Holy Office; but, on the other hand, the lack of a gaol and its accessories tends to render the court leet ineffective as a minor criminal court: it is not every pest of the community who can be reached through the purse. Admitting, however, the rule to be, in the seventeenth and eighteenth centuries, a good and even necessary one, we are constrained to ask when and how it has arisen, and whence it derives its authority

(1) As to *imprisonment* for a definite period, the answer probably is that it has never been a common-law penalty. Both common law and court leet, indeed, trace their origin to those days of ample leisure, small liberty, and wide-extending serfdom and slavery, when mere detention was not looked upon as a hardship, and when it was certainly not employed as a general punishment.² It is one thing, however, not to do a thing, quite another not to be allowed to do it; and it would appear that no lawyer prior to Sir Edward Coke ventured to leap the legal gulf and to say that the court leet *cannot* inflict the penalty of imprisonment.³ Coke's opinion seems, however, from that time onward to have been generally accepted, probably because it made little difference to practice; but so late as the end of the eighteenth century a protest in the name of antiquity is raised by Ritson.⁴

¹ *Manchester Court Leet Records*, IX., 244.

² Cf. Pollock and Maitland, *Hist. Eng. Law*, II., 516-8. Arrest and detention in order to bring to trial is, of course, another matter: this is, as we have seen, recognised by *Statutum Wallie*, and limited by stat. 1 Ed. IV., cap. 2; cf. Pollock and Maitland *op. cit.*, II., 582-4.

³ Coke *The Compleat Copyholder*, pp. 60 et seq., and *2nd Institute*, pp. 43-4. Cf. also *Godfrey's Case*.

⁴ Ritson *Jurisdiction of the Court Leet*, p. xvii. It may here be noted that punishments actually employed in the Stockport court leet included (1) the brank, or scold's bridle, (2) the ducking stool, (3) the pillory, (4) the stocks, (5) the whipping post, and (6) the dungeon: see Heginbotham *Hist. Stockport*, p. 171. It would appear, too, that under statute 4-5 P. and M., cap. 3, relating to musters, the leet had power to imprison defaulters.

(2) As to the statement that the court leet may not "inflict any *corporal punishment* whatever," it is possible to make it only when the pillory and the tumbrel have ceased to be used for the correction of defaulting bakers and brewers, when the cucking-stool and the ducking-stool for gossips and scolds have fallen into decay, and when the feet of drunkards no longer fill the gaping portholes of the stocks; and when, moreover, long lapse of time has dimmed the memory of those larger powers over life and limb, especially in the case of the hand-having thief, which the *quo warranto* inquest revealed, and which Edward I. was so much concerned to take away.¹

(3) But whatever fragmentary powers of detention and corporal punishment leets may in early days have possessed and exercised, there can be no doubt that *amercement* has been at all times the chief, and in later times the sole, legitimate means at their disposal for enforcing the verdicts of the jurors. The presentments of offenders habitually end with the formula, "ideo est in misericordia." In theory, when a person is judged to be "in mercy" he is liable to lose all his possessions.² But Magna Carta has proclaimed the doctrine of moderation,³ and custom has reduced the average amercement to the limits of a reasonable fine. Under the common law the process of amercement is threefold; first, the jurors present the offender; secondly, the steward declares him to be "in mercy"; finally, special officials called "affectors" assess and fix the amount of the penalty.⁴ But in course of time exceptions to this threefold process have crept in; statutes have, as we have already noted, decreed specific penalties for specific offences, and in these cases there is no room for affectment; again, the court itself issues orders *sub pœna* of precise amounts in the event of disobedience, and

¹ E.g., *Placita Quo Warranto* (8): "Abbatas de Waltham . . . dicit quod re vera multociens fuerunt latrones iudicati in curia sua de Alrichesheto et suspensi ad furcas vicinorum quas accommodaverunt," etc., etc.

² The *Dialogue de Scaccario* says: "Cum igitur aliquis de mobilibus in beneficio regis iudicatur, lata in eum a iudicibus sententia per hæc verba 'iste est in misericordia regis de pecunia sua,' idem est ac si 'de tota' dixissent." Stubbs *Select Charters*, p. 238.

³ "Liber homo non ameretur pro parvo delicto, nisi secundum modum delicti," etc., etc. Cf. *Mag. Cart.*, 1215, § 20. Would not the closing words of this section confine the power of amercement to the "twelve men" as distinct from the chief pledges? They run: "Et nulla prædictarum misericordiarum ponatur, nisi per sacramentum proborum hominum de visneto." Stubbs *Select Charters*, p. 299.

⁴ Comyns says that the "affectors" are appointed by the steward (*Digest*, s. v. *Leet*). Sheppard conveys the same impression (*Court Keepers' Guide*, p. 63). In Wykyn de Worde's edition of the *Modus tenendi Curias* the definite statement is made: "And when all the court is done then shall the stewart choose two or thre or foure affectes to affecte the courte upon theyr othes," etc.; but we cannot be sure that it is always the case that the steward chooses them. They are usually chosen from among the jurors, and they are placed under oath to "take, assess, and affere the severall amerements" well and truly (cf. Sheppard, pp. 22 and 64).

here once more the affectors are excluded; further, the jurors themselves begin to take upon themselves the function of saying how much the amercement shall be, and, though this is irregular, the law is at length constrained to recognise the practice;¹ finally, when the steward fines² a suitor for contempt of court,³ or an officer of the court for neglect of duty, it is held that affectment is unnecessary.⁴

(4) *Specific redress*, relic of the vanished police system of mutual guarantee, is not recognised by the guide-writers. But its lingering survival throughout the country forces it from time to time upon the attention of the courts. For example, the question whether a leet jury can search for and destroy false weights and measures is dealt with in the conflicting cases of *Moore v. Wickers*, and *Willcock v. Windsor*.⁵

§4.—Traverse.

The declaration and affectment of an amercement completed, there arise two knotty problems: the one, whether the judgment of the court may be formally traversed; the other, how it can be practically enforced.

As to the first, Sheppard expresses the generally accepted opinion when he says: "A presentment in a leet duely made by the grand jury is said to be as gospell, and no traverse lyeth to it, but in some speciall case as when it doth concern freehold," or when it deals with a matter which is "out of the jurisdiction of the court."⁶ According to the strict letter of the law, then, a perfectly innocent and inoffensive person, equally with the most persistent pest of the community, may be crushed by heavy amercements from which he has no legal means of escape,

¹ Comyns, after stating the rule, admits: "but now it may be affected by the jury," and adds: "If the jury assess the amercement it is sufficient without other affectment" (*Digest*, s.v. *Leet*).

² For the difference between a fine and an amercement, see Pollock and Maitland *Hist. Eng. Law*, II., 517.

³ Telling a steward that he had been held to be contempt in case of *Earl of Lincoln v. Fisher*; putting on hat in court was regarded as such in case of *Bathurst v. Cox*.

⁴ Sheppard *Court Keepers' Guide*, pp. 22-3.

⁵ See above, note at end of Chapter V., and cf. Scriven *Copyhold*, Vol. II., pp. 870 et seq.

⁶ Sheppard *Court Keepers' Guide*, pp. 21-22. Cf. Palgrave *Commonwealth*, p. 268; Hale *Pleas of the Crown*, Part II., Ch. 19. Note, too, the important opinion quoted in Kellway's *Cases* (p. 66) in the report of a case of 20 Hen. VII. (1505): "Frowike dit que le presentment en un leete serra entend auxy voler come le Evangelist. . . . Le partle serra condemns per le presentment meisme, issint que li navera nul maner de response a cest presentment, sinon que le chose touche franktenement on le vie de home; *quod fuit concessum*." To the contrary, note the unique opinion of Britton (Nichols Edition, pp. 183-4): "If such jurors have wrongfully aggrieved any persons in their absence by their presentments, in such case the persons aggrieved shall have an action, to be reinstated by plaint in the county court or by our writ if necessary, either against all the twelve jurors jointly or against any of them severally. And if the plaintiffs cannot make good their plaints then let the defendants recover their damages and the plaintiffs be in mercy."

provided only that the proper formalities have been observed and the presentment "duely made."¹ What, then, are the marks of a duly made presentment? Sheppard gives us five:—(1) It must be in Latin; (2) the offence named must have been committed within the sphere of the court's jurisdiction; (3) it must be "certain" and exact in its statements; (4) if it be of a nuisance, it must say: "to the common nuisance of the people"; (5) it must relate to "things whereof the leet hath conusance."² He, of course, further assumes that twelve jurors agree upon it, that they impose the amercement in set words, and that the amercement is properly affeered. Under these conditions the verdict of the leet jurors is "as gossell." Now, the power of giving such an untraversable judgment—however beneficently that power may be exercised—is a tyranny in the strictest sense of the term, and those who have any regard for liberty cannot but feel thankful that, just at the time when persons accused of *grave* crimes were losing whatever protection had been accorded to them by the systems of compurgation and ordeal, the irresponsible "twelve men"—the grand jurors—of toun and leet should have been required by the *Assizes* and *Magna Carta* to transfer the trial and punishment of cases involving loss of life or limb to courts where the finding of a true bill by a grand jury is *not* regarded as the giving of an untraversable verdict, but merely as the preliminary to an open and unprejudiced enquiry by another jury of a wholly different kind. Yet even in the case of minor offences, punishable only by amercement, the power of the leet jurors may be very galling. They can use it not only to the safeguarding of the commonwealth, but also to the destruction of unpopular individuals. Hence efforts—though unavailing ones—are made to restrain it. Some lawyers contend that in case of an excessive amercement a writ *de moderata misericordia* lies;³ but the King's Bench decides that the writ does not lie where a person is amerced in a court of record.⁴ Others, again, maintain that "if a presentment by twelve be false, the party at the day of presentment shall have a writ of false presentment";⁵ but in the case of the writ *de falso judicio*,

¹ That this was no imaginary danger see evidence in Part III. of this Essay, especially under Stopney and Wirral.

² Sheppard *Court Keepers' Guide*, pp. 20-21.

³ Fitzherbert *Natura Brevium*, p. 75. Coke on Litt. *1st Institute*, p. 128.

⁴ *Case of Stubbs v. Flower*. Scriven *Copyhold*, II, 853.

⁵ Comyns *Digest*, s.v. *Leet*. Cf. also Kitchin *Jurisdictions*, pp. 327 and 318.

as in the case of the writ *de moderata misericordia*, it is held that it is not available in respect of a court of record.¹

But, though these direct remedies fail, the resources of civilization are not exhausted. To begin with, every one of the essentials of a valid presentment can be applied as a test in an action in the King's Bench, and the crown lawyers do, as a matter of fact, apply them with extreme rigour. Searching *quo warranto* proceedings investigate the fundamental question of the right of the lord to hold a court leet at all. That right established, the lord has to show that the court has been duly announced, and lawfully held; that the jury has been properly impanelled, sworn, and charged; that the offence and the offender are both subject to the court's jurisdiction; that the presentment is "certain," and entered in prescribed form;² that the amercement has been regularly declared and affeered, and so on. Failure to satisfy any one of these tests may involve the quashing of the verdict of the leet jurors. If Shylock will appeal to the letter of his bond, by the letter of his bond he shall be judged.³

If, however, neither the court, nor the presentment, nor the procedure can be found wanting by the severest tests of the crown lawyers, there yet remains one final remedy for extreme cases. The writ of *certiorari*—which the crown demands of absolute right, but which the subject obtains only on satisfying the crown that a *prima facie* case of miscarriage of justice has been made out—can be issued, calling the whole matter *ab initio* before the court of King's Bench, where the original presentment can be traversed.⁴ By means of this writ the supreme

¹ Keilwey's Cases, p. 86. Cf. Pollock and Maitland *Hist. Eng. Law*, II., 666-8.

² "In every presentment of a nuisance in a court leet, it must be mentioned to be *ad nocumentum ligeorum Domini Regis* . . . the omitting it is a fault incurable . . . that it was *ad commune nocumentum* is not sufficient." Viner *Abridgment*, s. v. *Court Leet*. See also Scriven *Copyhold*, II., 556-8 and 860, and the cases there given.

³ Of one test, however, which surely might have been applied, I have found no trace. There apparently was no writ *de falsa Latinitate* calling the case from the local court to the court of the proctors of the Universities. Yet such a writ would seem to have been required to provide an appropriate remedy for, e.g., the man who in the Savoy leet was amerced "*quia tetharavit vaccam ad wntermill*"!

⁴ Scriven *Copyhold*, II., 868: "Although a presentment in leet not affecting either life or freehold is probably not traversable at the leet, yet it is settled that all presentments in leet may be removed by *certiorari* into the court of King's Bench and there traversed." Viner *Abridgment*, s. v. *Court Leet*: "A presentment in the leet or tourn after the day of the presentment binds the party for ever and is not traversable, but in cases that touch one's freehold . . . Therefore the course is to remove such presentments into the King's Bench by a *certiorari* where he may traverse them." Comyns *Digest*, s. v. *Leet*: "A presentment in a tourn or leet by twelve of a matter within their jurisdiction is not traversable. But it may be removed by *certiorari* into the court of B. R. and is traversable there. But a presentment of a matter out of their consuance will be traversable, as of a freehold;" and again: "If a line be excessive, or without cause, it shall be discharged upon a *certiorari* to remove it to B. R." For the form of this writ of *certiorari* see Holdsworth *Hist. Eng. Law*, I., 431; and for a brief account of its operation see Carter *Hist. of Eng. Legal Instit.*, pp. 95-96. Cf. also the case of *R. v. Roupell*.

judiciary establishes its right to apply the principles of the higher criticism even to the untraversable gospel of the leet jurors.

§5.—Enforcement.

In cases in which there is no suggestion that the court leet has overstepped its sphere, or abused its powers, but in which it has faithfully undertaken its appointed task of defending from annoyance the king's liege subjects resident within the precincts of its jurisdiction, how can it make its defence effective? how can it enforce its judgments? In most, if not all, cases, as we have just seen, the only penalty which the court is allowed to inflict is the penalty of amercement. But what if the person amerced does not pay? The lord of the leet has two weapons of enforcement, either of which he may choose, but both of which may end in bringing him and his leet under the jealous scrutiny of a higher court. He may bring an action for debt, or he may himself levy a distress.¹

(a) *Action of Debt.* If he is strong in legal right (as when he is enforcing such a statute as 33 Hen. VIII., cap. 6), and feels that he dare venture at once as plaintiff into the presence of the king's judges, he will bring an action for debt, especially if the amount at stake be large. On him, then, will fall the onus of proving that his court has not exceeded its powers. All kinds of awkward questions may be asked; his very right to hold the court at all may be challenged. Hence it is not to be wondered at that—as the king's judges show a marked tendency to limit and reduce local franchises—the lords of leets but rarely risk the issue of actions for debt.²

(b) *Distress.* There remains the more attractive alternative of distraint, and this is the obvious weapon to be employed where the lord has might, when the debt is small, and if the delinquent owns cows. But distraint has difficulties of its own. The distraining officials, constables and bailiffs, are unpaid and unzealous executive agents, chosen from an un-

¹ Cf. Sheppard *Court Keepers' Guide*, p. 24. Note that in the particular case of crossbows, stat. 33 Hen. VIII., cap. 6, expressly says that the mottle of the penalties of 20/- inflicted under the act "shall be levied and paid to the use of the owner of the said leet or lawday by distress or action of debt."

² Cf. case of *Colebrook v. Elliot*, 1766. This was a case of debt for an amercement set and offered in the leet of the manor of Stepney. The defendant had been amerced for selling a loaf of bread four ounces below weight. This was held to be an offence not under the old assize, but under the then new statute of 3 Geo. III., cap. 11, and so outside the leet's jurisdiction. Note also the case of *Davidson v. Moscrop*, 1801, in which the custom of a leet was held to be bad.

sympathetic commonalty. If, in the process of levying a distress, rescues, affrays, and pound-breaches occur, they are offences punishable in the leet only by further amercements, enforceable only by further distraints, which are fruitful of more rescues, affrays, and breaches—and so on circuitously. Then, again, the seizure of pledges may well bring the lord—this time as defendant—within the jealous reach of the king's justices. Altogether, it is troublesome and vexatious work, this collecting of amercements.¹

The court leet, in fact, is incurably weak on its executive side. As is elsewhere remarked, its eye is keen, its ear is quick, its nose is sensitive; but its arm is feeble. Forbidden to touch the bodies, it cannot with certainty reach even the pockets of those who defy it.

CHAPTER XV.—THE CLOSE OF THE COURT AND AFTER.

§1.—The Close of the Court.

After the jurors have made their presentments, and the affeerors have been appointed and set to work, the proceedings of the court are soon brought to an end. The retiring officers are called and are discharged of their duties; the persons chosen to fill the offices for the coming year are summoned and required to take the appropriate oaths.² Then the bailiff, with a threefold "O Yes!" announces the conclusion of the court: "All manner of persons that have appeared here this day, at this court, and have further to doe here, let them now come in and they shall be heard; else every one may now depart and are discharged of their attendance and not to appeare again at this court, but are to keep their day again upon new warning."³

¹ The court rolls are eloquent concerning the non-payment of amercements. The example of Norwich is typical: in 1289 the amount of the duly affeered amercements is £72 18s. 10d.; the amount accounted for by the collectors is but £17 0s. 2d. See Hudson *Leet Jurisdiction in Norwich*, p. xl. If this was the case in the green tree of the thirteenth century, what of the dry?

² For oaths of bailiff, hayward, decliner, ale-taster, and constable, see Kitchin, pp. 83-5. Cf. also for constable and hayward, Sheppard, p. 63.

³ Sheppard *Court Keepers' Guide*, p. 65.

§2.—The Records.

The court leet, as “*curia domini regis*,” is a “court of record,” that is a court the duly authenticated record of whose proceedings is “of that credit that admits no alteration or proof to the contrary.” In theory, what it says is the utterance of the king himself concerning what has taken place in his own presence, and as such is incontrovertible.¹ Until the thirteenth century the records of local courts in England seem universally to have remained unwritten; they existed only in the memory of the king or the king’s representative, and with him perished. But from the time of Henry III., if not of his father, the practice of committing the records to writing spread. Sir F. Palgrave was able to discover no examples of written manorial rolls older than those of Letcombe Regis, dated 1267; but Professor Maitland has found evidence that the Abbey of Ramsey had them as early as 1239.² As being store houses of incontestable evidence and authoritative precedents, the rolls of courts leet were important, and their keeping a matter of considerable responsibility. Throughout the early period correctness of form was no doubt essential, and the language had to be Latin; but by the middle of the sixteenth century, if not earlier, the rules were becoming relaxed, and informality prevailed. Latin lingered in the title and other stereotyped portions of the rolls, but all the rest was entered in the popular English of the presentments.

The vast collection of court leet rolls which have been preserved, from the thirteenth and following centuries down to the present time, of course supply us with information about the jurisdiction of the court not less valuable than that afforded by the reasoned and elaborate treatises of the lawyers. But it is information of a different kind. The court keepers’ guides show us the courts at rest, the rolls reveal them in motion; the first depict an ideal, ordered and complete, the second reveal infinitely various though fragmentary glimpses of the actual. Neither source of information alone gives a complete representation; each corrects and supplements the other. The rolls compel us to admit numberless and serious exceptions to the rigid rules of the lawyers; the legal treatises enable us to reduce to some sort of general order the chaotic practices of the courts. We have in the preceding pages endeavoured to gain some conception of the statical ideal of the court leet; it is now time to try to obtain

¹ Pollock and Maitland *Hist. Eng. Law*, II., 669.

² Maitland *Select Pleas*, p. xli.

from the court rolls in general, and from the *Southampton Court Leet Records* in particular, an equally clear conception of the kinematical reality of its jurisdiction.

With the court rolls, moreover, will have to be taken into account other historical sources of information, the exact nature of which will be described in the ensuing section, so that all available light may be thrown on the somewhat complex and obscure phenomena of the leet in practice.

END OF PART I.



PART II.

The Leet in Practice.

SECTION I.—THE AUTHORITIES.

SECTION II.—THE SOUTHAMPTON COURT LEET.

- (a) THE UNRECORDED PERIOD.
- (b) THE PERIOD OF THE RECORDS.
- (c) THE PERIOD OF THE REPORTERS.

SECTION III.—THE OTHER COURTS LEET OF ENGLAND
AND WALES.

Section I.—The Authorities.

CHAPTER XVI.—THEORY AND PRACTICE.

§1.—A Study in Contrasts.

The English constitution is rich in contrasts; its theory and its practice are often widely divergent. That this is so is due to the fact that, unlike most other modern constitutions, it is not "rigid"; is not an artificial thing, the creation of the brain of an idealist, the sculptured product of political science, a Galatea to whom the passionate prayers of Pygmalion have brought life, perhaps, but not the possibility of development. It is a natural growth, rooted deep in the institutions of primitive society; it has sprung up buffeted by circumstances to which, as to an ever-changeful environment, it has had to adapt itself; it has been trimmed and pruned by countless generations of amateur gardeners; it has been ceaselessly nibbled at by fowls of the air, and fretted by inexterminable vermin: it is the creation of unconscious human nature, consciously cultivated by human experience. Thus, while on the Continent legal theory bears to constitutional fact much the same relation as a guide book bears to a work of art; in England the relation is rather that of a nature-study manual to a forest tree—a combination of erroneous science with inappropriate reflections. As a rule, in England, legal theory, owing to the conservatism of the law, has lagged far behind practice. For example, the preamble of any act of parliament of the present day would lead the uninformed observer to suppose—and probably will lead the scientific historian of two thousand years hence to suppose—that the statute in question was enacted by the king's most excellent majesty; that the king, however, before exercising his arbitrary power, took counsel first with his bishops, and secondly with his lords secular; and that finally, as a kind of afterthought, he asked the formal approval of the commons in parliament assembled. In a similar manner, in the matter of cabinet gov-

ernment, legal theory remains oblivious of the facts of the Great Rebellion, the Glorious Revolution, the decline of the privy council, the development of the party system, the diminution of the royal control over ministers, the evolution of the office of premier. Occasionally, however, on the other hand, legal theory, owing to the devotion of lawyers to abstract ideas and general principles, outstrips constitutional practice and describes an ideal state which continues to remain a Utopia. Thus, the writings of the chancery lawyers of James I.'s day define a royal autocracy far more complete than any experienced reality of Stuart, or even Tudor, despotism; while Blackstone's *Commentaries* depict a "separation of powers"—legislative, executive, judicial—wholly devoid of correspondence with Georgian fact. So it is, too, in the case of legal theory and the court leet. Legal theory does not here lag behind among historic precedents, striving to conserve the past; it rushes forward, impelled by the wills of resolute rulers, along the lines of the abstract principle of royal prerogative and divine right, striving to explain away the past, to mould the present, to obtain secure possession of the future. Thus, as we have seen, matured legal theory recognises but one type of court leet. This ideal court leet is derived out of the sheriff's tourn by royal concession; it is sharply distinguished from court baron and court customary in constitution, in jurisdiction, and in procedure; it is prohibited from dealing with grave offences; it can take cognisance only of such nuisances as are in the strictest sense public; it is precluded from entering, save by express permission, the large region of statute law; it is forbidden to employ the penalty of imprisonment, or indeed any other penalty than fine and amercement; it is the humble and obedient servant of the king.

We have now to turn to the very different picture presented by historic records. In the place of uniformity we shall see infinite diversity; instead of complete separation of courts, a confused and chaotic undifferentiation; in lieu of limitation of jurisdiction to the legal articles, a wide intermeddling with other matters great and small; in defiance of restriction to the penalties of fine and amercement, a free employment of the methods of barbarism; in contrast to meek subservience to the royal will, a restless conflict to maintain a rival authority: we shall have before us, in short, an institutional world almost unrecognisable as that supposed to be portrayed by the court keepers' guides.

§2.—Mutual Influence of Theory and Practice.

Wide, however, as is the divergence of historic fact from legal theory, we shall exaggerate the want of coincidence between the two if we fail to observe that they have always had a strong mutual influence the one upon the other, and that in consequence the margin of difference between them has constantly tended to diminish. On the one hand legal theory has been compelled to some extent to adapt itself to recalcitrant fact. For example, legal theory in the third quarter of the thirteenth century proclaimed loudly and clearly the doctrine that “the only possible warrant for the exercise of royal rights is an express royal grant”;¹ in the fourth quarter, owing to the strenuous resistance of powerful lords to the *quo.warranto* proceedings, it has been constrained to allow that proof of continuous exercise since the year 1189 shall be looked upon as establishing a prescriptive right, a presumption of a prehistoric royal concession, equivalent in validity to a charter.² Similarly, legal theory says that the steward of a leet shall *not* select the jury; but it admits that a twenty-years custom to the contrary is good.³ Nay, even Magna Carta “can be prescribed against”; so that in cases where leet courts meet at irregular times, hold too frequent sessions, are constituted in abnormal forms, and do unusual things, “prescription” acts as a sovereign harmoniser, laying down a rule to include persistent exceptions to all other rules. But if on the one hand legal theory has thus accommodated itself to intractable practice, on the other hand it is equally remarkable that practice has been extensively moulded and modified by legal theory. The influence of such a manual as Kitchin’s *Jurisdictions* must have been immense; and I think I can discern, in the Southampton records, evident traces of its formative power over the Southampton court,—in the change of the name “lawday” to “court leet,” in the intrusion of the name of the steward into the title, in the introduction among the presentments of a formal reference to treason and felonies, in a serious conflict between steward and jurors respecting jurisdiction, and so on. Similarly, and even more certainly, does the Manchester court leet bear about it marks of the moulding of the law; as it is revealed in its later rolls, it is perhaps the nearest approach to the model court leet which ever existed in England.

¹ Bracton *De Legibus*, f. 56; *Placita Quo Warranto*, f. 86 et passim. Cf. *Maitland Select Pleas*, p. xx.

² *Statute of Gloucester*, 1290.

³ Cf. the Petersfield case of *R. v. Jolliffe*.

Nevertheless, be it finally repeated, in spite of adaptation of law to fact, and in spite of the modification of practice by principle, the court leet of legal theory remained throughout the centuries, and still remains, an ideal having but a partial and imperfect correspondence with reality.

§3.—Sources of Information.

When we turn from the court leet *in abstracto* to the leet courts *in concreto*, when we leave the region of legal theory and enter the domain of historical fact, we find ourselves in the presence of numerous and various fresh sources of information. First and foremost must be placed, both in point of bulk and in point of importance, the extant rolls of the countless courts which at one time or another existed all over England and Wales. The immense majority of these rolls remain still in manuscript, frequently not easy of access and nearly always difficult of decipherment; but every year sees large instalments of them put through the press, and a sufficient number are now available to render it improbable that any very startling revelations will be made, or revolution of opinion effected, by the publication of the remainder. Besides the court rolls, however, much valuable evidence is given by what may be described generically as external sources of information, and before dealing with the court rolls I will briefly enumerate the chief classes of these, following as nearly as possible a chronological order.

CHAPTER XVII.—EXTERNAL SOURCES OF INFORMATION.

§1.—Charters.

The leading characteristic of the modern court leet is that it is the king's court, *curia regis*, exercising royal jurisdiction, and possessed of royal franchises. It is not to be marvelled at, therefore, that royal charters frequently make mention of it, granting or confirming it. From Edward I.'s time onward, when, under the influence of legislators and lawyers, leet jurisdiction tended to become (to use Prof. Tait's suggestive term) "standardised," the references are usually precise and unmistakable.¹

¹ Thus, for example, Henry IV.'s charter to Southampton (1401) contains the words, "*Concessimus . . . visum de francplegio et omnia quæ ad illum pertinent*," and the charters of Edward IV. (1461) and Charles I. (1640) employ almost identical terms.

But in the charters of earlier date, in those, that is to say, of Norman and Angevin kings, and still more in those of Anglo-Saxon kings, the elements of what afterwards became leet jurisdiction can be recognised only, and that uncertainly, under various vague terms, of which the most frequent and most notable, as well as the most doubtful, are "sac and soc."¹ It is true that the Edwardian and later lawyers tried to minimise the significance of these jingling and unintelligible words,² and to maintain that they indicated nothing beyond the manorial jurisdiction of the court baron;³ but these men of law, servants of the king, were politicians, not historians, and were concerned not to solve enigmas of archæology and philology, but to vindicate the royal prerogative. If, indeed, it were true, as the Tudor lawyer, Keilwey, reports, that "chescun seignior de comen droit avera tiels choses"—i.e., sac, soc, etc.—one is constrained to ask, first, why, in that case, the formal grant was made so commonly and so prominently in charters? and, secondly, under what terms the territorial magnates of, say, Edward the Confessor's time, exercised their regal franchises?⁴ Whatever be the answers to these questions, it is sufficient here to note that the effort to trace leet jurisdiction by means of charters back beyond the days of Edward I. takes one along misty and doubtful tracks, but that from the thirteenth century onward to the seventeenth the way is clearly marked.

§2.—Hundred Rolls and Placita de Quo Warranto.

With the *Hundred Rolls* of 1274-9,⁵ and the subsequent and consequent pleas of *quo warranto*,⁶ we come upon sure historical

¹ Cf. King John's *Carta de Dunewic* (A.D. 1200):—"Sciatis nos concessisse . . . quod burgum de Dunewichque sit liberum burgum nostrum, et habeat soccam et saccani et toll et team et infangen-thef." *Rot. Cartarum*, p. 61, and Stubbs *Select Charters*, p. 311.

² Pollock and Maitland *Hist. Eng. Law*, Vol. I., p. 579.

³ Cf. *Placita Quo Warranto*, 245: "Sak, sok, toll et theam quas quidam verba habent referri ad curiam baronis et non ad visum francplegi."

⁴ On the whole question of "sac and soc," see Maitland *Domesday Book and Beyond*, pp. 80 and 258; Carter *Hist. of Eng. Legal Inst.*, pp. 21-3; *Essays in Anglo-Saxon Law*, pp. 40-44.

⁵ *Rotuli Hundredorum*, published in two volumes by the Records Commissioners in 1812. "These rolls contain inquisitions taken in pursuance of a special commission issued under the Great Seal dated the 11th day of October in the second year of King Edward the first" (Intro.). The commission mentions thirty-five articles of enquiry. Among these are, No. 8:—"Qui . . . clamant habere wreccum maris quo warranto et alias libertates regias ut furcas [gallows] assisus panis et cervisie [assize of bread and ale] et alla que ad coronam pertinent et a quo tempore"; and No. 13:—"Item de omnibus perpresturis [encroachments] quibuscunque factis super regem vel regalem dignitatem per quos factæ fuerint qualiter et a quo tempore"; and No. 19:—"Item cum vicecomites non debeant facere turnum suum nisi bis in anno, qui pluries fecerint in anno turnum suum et a quo tempore." The commissioners presented their reports in the third year of Edward I.; "extracts" were made from them for the use of the Itinerant Justices; the *Statute of Gloucester* was passed (1278), conferring special powers upon the judges, and at once they began their eyre and instituted their extensive *quo warranto* proceedings.

⁶ *Placita Quo Warranto*, published by the Records Commissioners in 1818.

ground, and have before us evidence of the highest importance and value. We find that the *visus franciplegii* was one of the most frequent of the numerous *regiæ libertates*, or royal franchises, which were claimed by the majority of the spiritual and lay magnates; we find, too, that the view of frankpledge was generally closely associated with, yet still distinguishable from, other minor franchises, such as wreck of the sea and the assize of bread and ale (*omnia ad hujusmodi visum pertinentia*); and we find, lastly, that very rarely can any royal charter be produced conferring these privileges, but that they are, as a rule, claimed by prescription. The task of collecting in detail the local evidence from the three massive folio volumes of rolls and pleas, with their two thousand and more closely packed pages of abbreviated Latin, has been one which I have not been able to undertake. One example, however, I will give, which, on the one hand, will show the kind of information to be looked for, and, on the other hand, will illustrate the relation which exists between the *Hundred Rolls* and the *Placita de Quo Warranto*. The first of the *Hundred Rolls* in the printed edition relates to the county of Bedford, and on the opening page is given the return for the hundred of "Mannesheved" (Manshead). In answer to the question, Who claim to set up gallows, hold the assizes, etc.? the commissioners reply that, *inter alios*, the lord of Dunstable and Houghton does so, but "*nesciunt quo warranto.*" The *Placita de Quo Warranto* give the sequel. The prior of Dunstable, we are told, was summoned to show by what warrant he held a view of frankpledge, with all that belonged to it, in Dunstable, Houghton, and other places. He replied that he himself and all his predecessors time out of mind had held such views once a year, and that immemorial usage was his warrant.¹

§3.—Rolls of Parliament.²

The *Rolls of Parliament* contain twenty-four petitions and pleas relating to courts leet. These extend over the two centuries, 1306-1503. The following are the most important:—

(1) A.D. 1306: The Earl of Oxford petitions to recover a leet

¹ *Placita Quo Warranto*, pp. 72-3. "Prior de Dunstable summonitus fuit ad respondendum domino regi de placito quo warranto clamat (habere) . . . visum franciplegii cum omnibus ad hujusmodi visum pertinentibus in dicto burgo de Dunstable, et alium visum in Houghton," etc. (In reply) "Dicit quod ipse et omnes predecessores sui priores priorati predicti a tempore quo non extat memoria selecti fuerunt de predictis visibus semel per annum in predictis villis tenendis . . . et eo warranto clamat ipse visus predictos."

² *Rotuli Parliamentorum* (A.D. 1278-1503), 6 vols., c. 1783, with index volume, 1832.

court (*quandam letam in manerio de Swaffam*) which had been seized by the sheriff through the negligence of the earl's sub-tenant.

(2) A.D. 1314: The commons of Suffolk complain of false presentments at leets and tourns.¹

(3) A.D. 1335: William de Brewose prays that William Paynel, an intruder, may be prevented from entering his barony of Brembre and holding a view of frankpledge and the assizes of bread and ale therein.

(4) A.D. 1343: The commons ask that bailiffs of leets may be prohibited from levying excessive fines.

(5) A.D. 1344: The commons beg that no more commissions of new articles of enquiry in leets shall be issued.

(6) A.D. 1371: The commons pray that the king will make no more grants of leet jurisdiction (*hundrez, wapentakes, letes, etc.*) to private persons, because of the loss to the revenue ensuing therefrom, and that he will resume grants recently made.

(7) A.D. 1376: The commons complain that some bailiffs hold their leet courts oftener than the statutory twice a year, that they do not give due notice of them, and that they heavily fine poor people for non-attendance "*sanz afferement.*"

(8) A.D. 1376: The commons protest against the encroachments of the new justices of the peace within the province of leet jurisdiction; but they get no comfort from the king.²

(9) A.D. 1376: The commons pray that lords of leets may have the correction of taverners in respect of wines, but their request is refused—"il n'est mye article de vewe de francplegge." They try again next year, when there is a new king, Richard II., but they receive the same reply.

(10) A.D. 1406: The commons beg that the *Statutes of Labourers* may be enforced by leets.³

(11) A.D. 1425: The commons complain of the corrupt practices of some sheriffs, and ask that "justices of the peas, stuardes of letes and hundreds" may have power to enquire of such offences. The king replies, "*Ceste petition est graunte.*"

1 "A nostre seigneur le roi et à son conseil prie la communneute de Suffolk grace et remede de ceo qe les chief plegges à le letes et al tourn de viscomte presentent fausement gentz estre copables des articles de letes et de turn de viscomte là ou il ne sont de rien copables," etc. I., 293.

2 "Les estatutz faizt devant ces heures ne purrount estre gardez si ceste petition fust ottróle."

3 "Et qe en chascune leta, soit il en mayn du roy ou d'antra qeconq' liege du roy, soient un foitz per an touts les laborers et artificers demourantz dedeluz le dit lete sermentez de servir et prendre pur son service selonc les ditz estatutz," etc., etc. (Reply) "Le roy le voet."

(12) A.D. 1451: The commons present a bill to resume, with certain exceptions, all grants of leets made since the accession of Henry VI. (1422). The king refuses his assent.

(13) A.D. 1473: "Prayen the commons in this present parlement assembled that whereas the governours, as maires bailiffs portreves and other like governours of every cite burgh and town of substance within this your realm, for the most part have courts of letes and vewes of frankplegg' yearly holden within the same" patents for searching and surveying ale, wine, and victuals which interfere with the privileges of these local leets may be revoked. The king assents: whence the statute 12 Ed. IV., cap. 8, the French of which may profitably be compared with the English of this petition.

§4.—Reports of Proceedings in the Law Courts.

We have already had occasion to notice how legal theory respecting leet jurisdiction was developed and elaborated by the opinions expressed and the judgments given in the law courts during the thirteenth and following centuries. We have now to remark that these same legal cases which helped to formulate theory, supply us also with vast stores of material from which to reconstruct the history both of leet jurisdiction in England as a whole, and of many local leets in particular. First in order of time, and in general (though not in local) importance, come the *Year Books*, which, as already stated, contain official reports, in French, of cases tried before the king's justices during the long and formative legal period 1292-1535.¹ Following the *Year Books* comes the long series of reports of leading cases extending in an unbroken succession to the present day.²

§5.—Local Histories.

Many of the histories of manors, boroughs, and counties—particularly the more modern ones—give valuable accounts of the courts leet of the local areas with which they deal. It is unnecessary for me to enter into particulars in this place, since under each town and manor referred to in the third section of this part of the essay will be found a note concerning authorities,

¹ See above, p. 27. For another view of the *Year Books*, however, see Dr. W. S. Holdsworth's recent articles in the *Law Quarterly*.

² Cf. *The Reporters Chronologically Arranged*, by J. W. Wallace; *The Lawyer's Reference Manual*, by C. C. Soule. See also above, p. 28, and below, Appendix III.

while the general bibliography at the end of this volume gives the principal works classified under their authors' names. One book, however, demands mention here, both on account of the wideness of its scope, and on account of the large amount of attention which it gives to courts leet. That book is *The History of the Boroughs and Municipal Corporations of the United Kingdom*, by Merewether and Stephens (3 vols., 1835). The index of this ponderous work gives no less than 245 references (filling five crown octavo pages) under the heading "Leets"; each of the three volumes has as a motto—it may almost be regarded as the text of the whole discourse—a seventeenth century eulogy of the court leet;¹ while, finally, the learned authors express their own conviction when they speak of the leet, even in its mid-nineteenth-century decrepitude, as "a court more important to the real rights of the people—to the protection of their privileges and the correction of their grievances, as well as the due administration of the law, the good government of the people, and the constant preservation of the connecting link between the governors and the governed—than all the other courts in the kingdom" (p. 1294). When, however, the references are critically examined, the solid information which they give concerning leet jurisdiction and municipal courts leet dwindles to small dimensions. Merewether and Stephens were, as is well known, zealous municipal reformers, enemies of the close corporations which were prevalent when they wrote, eager to return to those imagined golden democratic days of the middle ages when inhabitant and burgess were convertible terms, burning with desire to recover for the people at large their supposed lost liberties of local self-government. Hence, wherever they saw, or found traces of, a court to which all the commonalty of any borough were bound to come, or at which freemen were sworn in, that court they called a court leet,² and that court they identified with the primitive folcmoot which they believed had controlled the affairs of the nascent township in the happy days before the traffic in charters of incorporation had been suggested to kings by the evil one. With such a theory as a working hypothesis, no wonder that Sergeant Merewether and his coadjutor, in spite of all their learning and industry, obscured

¹ The motto runs:—"The court leets and court barons are still in being in the country, retaining the same name and nature they had before the Conquest. Surely that old way of *justice at home*, and the exact division of it, caused great ease and safety to the people; and though there be difference at this day in these courts from what they were anciently, yet they may (without so gross an error as some would reckon it) be yet styled the same" (2 Whitelocks, 420-421, A.D. 1675).

² Cf. the case of Ipswich, pp. 592-3.

rather than elucidated the history of leet jurisdiction in England, and as one rises from a study of their multitudinous references, one is tempted to say with Artemus Ward, "The researches of these eminent antiquarians have . . . thrown much darkness on the subject; and it is probable, if [their disciples] continue their labours, that we shall soon know nothing at all about it." Nevertheless, amid countless irrelevancies, they have collected for us items of authentic and useful information concerning some four dozen municipal leets, and for this we owe them gratitude.¹

§6.—Reports of Public Commissions.

Several of these reports, whose preparation and publication were so marked a feature of nineteenth century administration, give valuable information concerning local courts in general, and those with leet jurisdiction in particular. The most important of these, arranged in ascending order of value, are:—

(1) *Report of the Commissioners on Common Law Courts*, 1833. This is valuable indirectly only as treating of the civil jurisdiction of the court baron.

(2) *General Report to the King in Council from the Honourable Board of Commissioners on the Public Records*, 1837. This report contains a particularly full and interesting account of the Southampton court leet or lawday as it was held seventy years ago.²

(3) *Reports of the Royal Commissioners on Historical Manuscripts*, 1870-1907. The numerous volumes of this invaluable series contain occasional, though rare, allusions to leet courts. Most of the information which they impart relates, of course, to the court rolls.

(4) *Report of Commissioners appointed to enquire into the Municipal Corporations in England and Wales*, 1835, with *Analytical Index*, 1839. This report, which supplied, when it was first drawn up, the solid foundation of fact upon which the *Municipal Reform Act* of 1835 was based, remains to the present day the most important single external authority from which our knowledge of the municipal courts leet of the early

¹ The expurgated list of towns is as follows:—Beverley, Buckingham, Callington, Calne, Cardiff (?), Cirencester, Clitheroe, Congleton, Cricklade, East Loos, Evesham, Grampound, Hackney, Haslemere, Huntingdon, Ipswich (?), Lichfield, Lymington (?), Lynn (?), Maidstone, Manchester, Marlborough, Newcastle-on-Tyne, Oxford University, Petersfield, Pevensey, Poole, Portsmouth, Queensborough, Reading, Retford, Richmond, Southampton, Southwark, Southwold, Stafford, Stockbridge (?), Taunton, Tavistock, Truro, Wales—various small places, pp. 1106 and 2108-9—Wells (?), West Loos, Westminster, Windsor, Yarmouth.

² Report, Appendix VIII., p. 494: quoted below in Section II. (c) of this part of the Essay.

nineteenth century is drawn. Although there are omissions, some of which fill one with amazement, reference is made to nearly 130 courts leet, and of these almost exactly 100 were extant when the commissioners made their enquiries. A table is given below (see Appendix VI.), in which these are enumerated. I fear, however, that I must add that I have been forced to regard some of the information supplied in this report with suspicion. In a few cases, notably in that of Maidstone, it has conflicted seriously with that obtainable from other sources.

§7.—Newspapers.

Many valuable reports of the proceedings of manorial and municipal leets are to be found in the local newspapers of the last one and a half centuries. For example, the meetings of the Southampton court have been reported, with fair regularity, year by year, in the *Hampshire Chronicle*, from 1772 to 1778; and to the present day in the *Hampshire Advertiser* (from 1823), the *Hampshire Independent* (from 1835), and the *Southampton Times* (from 1860).

CHAPTER XVIII.—THE COURT ROLLS.

§1.—Introductory.

All the external sources of information, however, taken together, sink into insignificance when the evidence which they furnish is compared with that supplied by the various collections of court rolls which have survived the ravages of time, and are now within the reach of students. These reveal to us the life of the court from within, and although, as Professor Maitland used to say, with his unfailing felicity of metaphor, they are taciturn witnesses which disclose their secrets only under stringent and strenuous cross-examination, yet when they can be made to speak, their testimony outweighs that of all others.¹

It is unnecessary for me here to repeat at length what has already been emphasized in the earlier portion of this essay,

¹ That even the testimony of court rolls, however, must not be accepted entirely without question, has been proved most happily and conclusively, in the case of the Peterborough leet (q.v.), by the late Miss Mary Bateson, in the *Eng. Hist. Review*, Vol. XIX., pp. 836-8.

and what will be reiterated by numerous examples in a later section, viz., that, with rare and late exceptions, these rolls are the rolls not of "courts leet," but—a very different thing—of courts with leet jurisdiction. That is to say, they record the proceedings of undifferentiated courts; of manorial courts, which dealt with nuisances and minor criminal offences at the same time and place as they dealt with transfers of land, or payments of debts; of municipal courts, which treated indiscriminately of common annoyances and sectional complaints, of private disputes and public grievances. The portions of the rolls which relate to leet jurisdiction have, in most cases, to be picked out with laborious care, and without any assistance from the writers.

It is possible, without unduly loading the pages of this essay, to append a list of the principal court rolls which up to the present have been put into print. With respect to the vast multitude of unprinted rolls, it is possible to do no more than to refer to collections and catalogues: a detailed list, if with great labour it were compiled, would occupy several hundred pages of this book.

§2.—Printed Court Rolls.

AYLESBURY: *The Manor of Aylesbury* (containing the court roll 15 Hen. VII.), by John Parker. (*Archæologia*, I., pp. 81-103).

BASINGSTOKE: *The History of Basingstoke*, by Baigent and Millard, containing the court rolls 1390-1588.

BASLOW: *Court Rolls of Baslow*, by Charles Kerry (Derby Arch. Soc., Vol. XXII., pp. 52-91; and Vol. XXIII., pp. 1-59).

BERKSHIRE MANORS: Mr. N. J. Hone, in his book on *The Manor*, prints rolls from the following manors in Berkshire: Brightwaltham, Compton, Donynton, Estgarston, Fifield, Frilsham, Leckhamstead, Letcombe Regis, Pesemere, Winterborne, Woodspene.¹

BRAY: *Extract from Manor Court Rolls* (1288 et seq.), by Charles Kerry. Printed from the originals preserved at Taplow Court, Maidenhead.

CLITHEROE: *The Court Rolls of the Honour of Clitheroe* (1377-1567), by W. Farrer (Lanc. and Chesh. Record Soc., 1897).

¹ There are also rolls from Addington in Surrey, Gnosall in Staffordshire, and Taynton in Oxon.

- COVENTRY: *The Coventry Leet Book, or Mayor's Register* (1420-1555), by Mary Dormer Harris (Early Eng. Text Soc., 1907).¹
- CRONDAL: *A Collection of Records and Documents relating to the Hundred and Manor of Crondal, in the County of Southampton*, by F. J. Baigent, 1891 (Hants Record Soc.). This volume contains rolls for A.D. 1281-2 in extenso, with catalogue of 175 others extending to A.D. 1761.
- DURHAM: *Halmota prioratus Dunelmensis*, by Longstaffe and Booth (Surtees Soc., 1889, Vol. 82).
- GREAT CRESSINGHAM: *Five Court Rolls of Great Cressingham*, by H. W. Chandler, 1885.
- HALHAM: *Court Rolls of Halham Manor*, by Sir J. B. Phear (Devon Assoc., Vol. XXII., pp. 240-9).
- HILBALDSTOW: *Court Rolls of the Manor of Hilbaldstow*, by Edward Peacock (Arch. Journal, 1887, Vol. XLIV., pp. 279, et seq.).
- HOLMESFIELD: *Court Rolls of Holmesfield*, by Charles Kerry (Derby Arch. Soc., Vol. XX., pp., 52-128).
- INGOLDSMELLS: *Court Roll of Ingoldsmells*, by W. O. Massingberd, 1902.
- LANCASTER EARLDOM: *Some Court Rolls of the Lordships of Thomas Earl of Lancaster, A.D. 1323-4*, by W. Farrer, 1901 (Lanc. and Chesh. Record Soc., Vol. 41).
- LEICESTER: *The Records of Leicester* [court rolls *inter alia*], by Mary Bateson, 3 Vols., 1899, etc.
- LITTLE CHESTER: *Court Rolls of Little Chester*, by H. E. Currey (Derby Arch. Soc., Vol. XV., pp. 99-104).
- LITTLE CROSBY: *Court Rolls of Little Crosby*, by A. Watts (Lanc. and Chesh. Hist. Soc., New Series, Vols. VII. and VIII.).
- LITTLEPORT: *Pleas in the Court of the Bishop of Ely at Littleport, A.D. 1285-1327*, by Maitland and Baildon (Selden Society's "The Court Baron," 1891).

¹ This leet had ceased to perform judicial functions and these records are administrative in their character. Their chief contents relate to:—(1) Quit Claim of Gerard de Alspath to the Fitlington Men; (2) Trinity Guild Fields, 1384; (3) Metes and Bounds, 1410-11; (4) Trinity Guild Fields, 1414; (5) Michaelmas Leet, 1420: election of bailiffs and ordinances concerning "raites of wages," etc.; (6) Election of John Leader, 1431, and his administration; (7) John Esterton, mayor, and his administration; (8) Henry Peto, mayor, e.g., survey of commons, 1423, accounts, etc.

- MANCHESTER: *Court Leet Records, A.D. 1552-1846*; (1) Selections, by J. Harland, 1864, etc. (Chetham Soc., Vols. 63 and 65); (2) *Verbatim et literatim*, by J. P. Earwaker, 12 Vols., 1884-90.
- MORPETH: *Customs of the Court Leet and Court Baron of Morpeth with the Court Roll of 1632*, by J. C. Hodgson (Arch. Æliana).
- NORWICH: *Leet Jurisdiction in Norwich* [containing court rolls from period 1288-1391], by W. Hudson (Selden Society, 1892).¹
- PARGETER: *Court Rolls of Pargeter*, by John Lane (Devon Assoc., Vol. XVI., pp. 703-24).
- PATRINGTON MANORS: *Court Rolls of Patrington Manors*, by H. E. Maddock (E. R. Antiq. Soc., Vol. VIII., pp. 10-35).
- PETERBOROUGH: *Court Leet Roll, A.D. 1461* [two versions, one English, one Latin], by Mary Bateson (Eng. Hist. Review, Vol. XIX., pp. 526-8).
- PRESTON: *Court Leet Records, A.D. 1653-1813*, by A. Hewitson, 1905.
- SALFORD: *The Portmote or Court Leet Records of the Borough or Town and Royal Manor of Salford, A.D. 1597-1669*, by J. G. de T. Mandley, 1902 (Chetham Soc., 2 Vols.).
- SAVOY: *Digest of the Proceedings of the Court Leet of the Manor and Liberty of the Savoy, 1682-1789*, by J. Ritson, 1789.
- SCOTTER: *Notes from the Court Rolls of the Manor of Scotter*, by Edward Peacock (Archæologia, Vol. XLVI., Part II., p. 371).
- SOMERTON: *Seven Somerton Court Rolls*, by A. Ballard, 1906 (Ox. Arch. Soc., Vol. L.).
- SOUTHAMPTON: *Court Leet Records, A.D. 1550-1625*, by D. M. and F. J. C. Hearnshaw, 1905-7 (Southampton Record Soc., Vol. I.).
- WAKEFIELD: *Court Rolls of Wakefield, A.D. 1274-1309*, by P. W. Baildon (York. Arch. Soc.).
- WIMBLEDON: *Court Rolls of the Manor of Wimbledon*, by P. H. Lawrence, 1866.

¹ The same rolls are reprinted in the recently published *Records of the City of Norwich*, Vol. I.

§3.—Unprinted Court Rolls.

Large collections of manuscript court rolls have passed into the keeping of public authorities, of which the Record Office and the great libraries are the most prominent.¹ But very many series remain still in private hands; of these some of the more dignified have been catalogued by the Historical Manuscripts Commission, while others—the lowly but numerous manorial court rolls—are being tabulated and described with exemplary diligence by the officials of the Manorial Society.

The principal public collections are those of:—

(1). *The Public Record Office.* Concerning the rolls deposited in the Record Office, Mr. S. R. Scargill-Bird says in his *Guide*: “The principal collections of court rolls or manor rolls existing in the Public Record Office are those of the Augmentation Office, those of the Duchy of Lancaster, the Halmote court books of the Palatinate of Durham, and the court rolls belonging to the several Welsh Jurisdictions.” To these have been added, though they are kept as separate collections, the large bodies of records belonging to the Ecclesiastical Commissioners and to the Land Revenue Office.

(2). *The British Museum.* Amid the great collection of manuscripts here gathered are an immense number of court rolls. Those acquired before 1882 have been catalogued in an *Index to the Charters and Rolls in the Department of Manuscripts* (Vol. I., *Index Locorum*), prepared by Messrs. H. J. Ellis and F. B. Bickley, and published in 1900. Those secured after 1882 are separately indexed as “Additional Rolls.”

(3). *The Bodleian Library.* To the bulk of the court rolls here an excellent guide is provided in the *Calendar of Charters and Rolls*, edited by Mr. W. H. Turner, and published by the Clarendon Press in 1878.

(4). *The Cambridge University Library.* No special catalogue of charters and rolls has been as yet completed.

(5). *Lambeth Palace Library.*

Of court rolls in the hands of local authorities or of private persons a large number remain still, not only unprinted, but unknown and unknowable. The Historical Manuscripts Commissioners have done excellent work in cataloguing the records of towns and the documentary treasures possessed by the old

¹ A useful summary list of the manorial court rolls in the chief public collections is given in an appendix to *The Manor and Manorial Records*, by N. J. Hons.

nobility and gentry of the country, and their reports bring to light many valuable series of court rolls.¹ Local antiquarians have in some parts of the country made efforts to ascertain the nature of the documentary treasures of their neighbourhoods.² But the bulk of the task has been left to the recently-constituted Manorial Society.³ The first of the monographs issued by this society has been Part I. of *Lists of Manor Court Rolls in Private Hands*, edited by A. L. Hardy, 1907. These lists, when completed, will form indispensable works of reference.⁴ But we are still at the beginning of the study of that branch of local history which the court rolls are waiting to reveal to us.⁵

¹ Specially notable is the report, dated 1905, on the Marquis of Lothian's MSS. preserved at Blickley Hall, Norfolk. There are accounts of leet rolls from the manors of Horsham St. Faltha, Blickling, Heveningham, Saxthorpe, Wymondham, Aylsham, Intwood, Waborne, Matlark, Canston, Marlingforth. Several of the series begin in the thirteenth century. Further, there is a note of a "Memorandum of Questions to be referred to the Leet Jury" [of Wymondham], in A.D. 1612. It is worthy of mention that all the questions relate to the common lands.

² Cf. the *Catalogue of the Court Rolls of the County of Suffolk*, by W. S. Fitch, 1843.

³ Registrar, Mr. Charles Greenwood, 1, Mitre Court, Temple, London, E.C.

⁴ The part already issued contains specific mention of leet rolls relating to Kibcott (Gloucester), Hildenborough (Kent), and Somerden Hundred (Kent).

⁵ Cf. article on *Manorial Court Rolls* in *Notes and Queries*, 9th series.



Section II.—The Southampton Court Leet.

(a) The Unrecorded Period.¹

CHAPTER XIX.—SILENT WITNESSES.

§1.—Introductory.

The Southampton court leet records are extant from no earlier a date than 1550.² We are consequently dependant for such fragmentary knowledge as we possess concerning the prior unrecorded period, first, to the mute testimony of such survivals of the older era as have come down to us in the ancient place of meeting, the established time of assembly, traditional names, and customary procedure; and secondly, to a few casual references which occur in some of the older borough documents.

§2.—Cutthorn.

Of the silent witnesses, by far the most interesting and impressive is "Cutthorn," the venerable old-time meeting place of the court.³ This is a circular entrenched mound, now surrounded by trees, capable of accommodating from three to four

¹ NOTE.—It seems convenient for purposes of exposition to divide the history of the Southampton court leet into three periods, to which I give the not-quite-accurately-descriptive names of (a) The Unrecorded Period; (b) The Period of the Records; (c) The Period of the Reporters. Under the first I treat the fragmentary evidence concerning the court which comes to us from the ages prior to A.D. 1550, the date at which the extant court rolls commence. Under the second I summarise the available information respecting the next two centuries of the court's history (1550-1750): I separate these two centuries from the later period because they saw the court more or less active and effective; I describe them as the Period of the Records, because almost all our knowledge concerning the court leet during their continuance comes from the court rolls. Under the third head, I sketch the history of the court's decline during the years succeeding 1750; and I call this century and a half the Period of the Reporters, because the court rolls, although they exist, cease to be important, so that we are dependant for the best part of our information on the reports of outside observers, of which, fortunately, a considerable number are obtainable.

² In the record for 1550, however, there are references to two slightly earlier books. One presentment (1550, § 78) speaks of a commandment given "the last lawdaye," while another (1550, § 34) refers to "the 6 leffe of a lawday boke made & presentid by the 12 men in 38 yere of the reigne of or late soveraigne lorde Kinge henry the VIIIth," that is A.D. 1547.

³ See frontispiece.

hundred persons, situated on the extreme northern boundary of the borough precincts, and thus just over two miles from the Bargate or northern gate of the old fortified town. The two significant things about Cutthorn, as the site of a court, are, first, that it is open to the heavens; and secondly, that it is located upon the borough's frontier.

The fact that the Southampton court leet was originally an open-air court suggests the immemorial antiquity of the assembly out of which it was derived. "An ancient court of justice," says Mr. G. L. Gomme, "was never held otherwise than in the open. . . . Narrow buildings would not have contained the assembled multitude; and the idea of heathendom required sacred places for the holding of a court of justice, in which sacrifices could be brought and divine oracles could be obtained. These sacrifices the Christian faith destroyed, but it left the old places of justice undisturbed.¹ Moreover, there remained long in the minds of early man a belief in "the magical untrustworthiness of roofed halls."² Evidence from many lands³ supports this view by telling us of primitive courts which met beneath the open vault of heaven—in forest clearings, round conspicuous trees,⁴ near famous burial places, on mountain slopes, by river banks, on sites marked by great stones, at city gates or church doors.⁵ Mr. Gomme goes so far as to contend that wherever we find an open-air meeting we find a relic of a primitive popular assembly, whose origin must be sought not among the institutions of the Anglo-Saxon settlers, not even among those of the earlier Roman conquerors, but among those of the nameless peoples of the remote pre-Christian era, the men, that is to say, of the race which made the tumuli and built Stonehenge.⁶ It cannot be said that Mr. Gomme conclusively proves his theorem; perhaps from the nature of the case that is impossible: but he restates it so frequently, and assumes it to be

¹ Gomme *Primitive Folkmoets*, p. 39. Concerning the Anglo-Saxon period, Pollock and Maitland say: "Probably the public courts were always held in the open air" (*Hist. Eng. Law*, I, p. 37.)

² Gomme, *op. cit.*, p. 159.

³ For brief summary see Gomme, *op. cit.*, pp. 20-48.

⁴ In Germany the oak and the lime were the trees most generally chosen, but the thorn was not unrecognised.

⁵ The German examples have been collected by Grimm in his *Deutsche Rechtalterthümer*; those of France are given in Michelet's *Origines du Droit Français*, those of Britain in Gomme's *Primitive Folkmoets*. Among the many examples enumerated by Mr. Gomme are the courts leet of Pamber, near Basingstoke (which met in a small piece of ground called Ladymead or Law-day-mead), Knaresborough, Pochester (which met on Boley Hill), Alwicke in Sussex (which met on Alwicke Green), and Knightlow in Warwickshire. This last met on a spot curiously similar to Cutthorn—"a mound of artificially raised earth, or tumulus," commanding a fine view, near the coach road, just within the parish boundary.

⁶ Gomme, *op. cit.*, pp. vii., 5, 10, 13, 14, 16, 18.

true so consistently, that it becomes impressive. However, even if not proven, it can never be disproven, and it seems fully to accord with probability. If, therefore, we accept it, as I think we may, as the explanation most likely to be true, we shall look upon Cutthorn as a meeting-place of immemorial antiquity, and shall regard it as a site once held sacred (perhaps as the burial mound of some great chief) by the remote pagan inhabitants of this river-bounded peninsula, the frequent scene of the gatherings of many long-vanished generations of men who assembled there for war, for counsel, for justice, and for sacrifice.¹

§3.—The Beating of the Bounds.

But Cutthorn is not only the site of an immemorial open-air court, it is also located close to the borough boundary, and this is a fact of almost equal significance. The "beating of the bounds," although it never was a function of a court leet as such, was always a prominent feature of the ceremony observed on the day of the meeting of the Southampton court.² It survived, though in the later period very intermittently, till so late a date as 1839, when almost all the other features of the day had disappeared; while even at the present time it is represented by the one piece of business invariably performed in the court, viz., by the reading of the borough's limits. Now this beating of the bounds, and this assembling in a mark-moot or boundary court, take us back by another historic road to that same remote antiquity and those same sacred associations to which we are led when we consider Cutthorn as the site of an open-air assembly. Of our own Teutonic forefathers, Sir Frederick Pollock says: "We know that the boundaries of the ancient German communities were guarded by a kind of sacred horror, and the most frightful penalties denounced upon violations of the *mark*."³ Of another people, in a still more primitive age, Mr. Warde Fowler writes: "When the clearing for a settlement was complete, the next thing was to mark it out and protect it from the strange and presumably hostile spirits who still dwelt in the woodland without. Here, without doubt,

¹ Mr. Gomme says of the Southampton court leet: "An old custom at Southampton clearly takes us back to the primitive folk-moot. . . . This custom was commonly known by the name of Cutthorn from the circumstance of the court having been formerly holden at a particular spot on Southampton Common called the 'Cutted Thorn,' now planted with trees," p. 165. In another place, speaking generally, he says, "There can be little doubt that the church or temple of primitive society was the selfsame spot as the assembly place of the people and the court of justice," p. 59.

² Cf. also Newbury, Savoy, etc., in the following section.

³ Pollock *Land Laws*, p. 18.

we may find the origin of the famous Italian practice of *lustratio*, which passed on into the ritual of the church, and still survives in many places, *e.g.*, at Oxford, in the beating of parish bounds. Whenever land or city or army had to be thus lustrated or purified, a procession went round the boundaries, stopping at particular points, and offering sacrifice there with prayer. No doubt the practical Roman mind saw in this process a convenient way of marking boundaries; but the chief object, and the original one, was to prevent evil influences—evil spirits in fact—from breaking through them.”¹ How little did that horde of hilarious roughs who, in 1839, in procession “went round the boundaries, stopping at particular points,”² and making merry with horseplay and with jest, think that they were the representatives—and, as proved to be the case, the last representatives—of remote predecessors who in religious awe had made the circuit, “offering sacrifice and prayer.”

§4.—Hocktide.

Another witness whose testimony mutely bears record to an old and vanished world is the name of that period of the year at which “time out of mind” the court has met. The earliest of the extant rolls, *viz.*, those of 1550 and 1551, tell us that even in those days the “*curia legalis domini regis*” was held “*pro termino de Hock, videlicet die martis proximo post Hock Tuesdaye secundum antiquam consuetudinem*”; at the present time, though the name of Hock is no longer heard, the court is still called for the day which corresponds to “the Tuesday next after Hock Tuesday,” that is, for the third Tuesday (or twenty-third day) after Easter Sunday.³

The origin of the word “Hock” is obscure. It has been

¹ W. Warde Fowler, M.A., *Religion and Citizenship in Early Rome* (Hibbert Journal, V., 843-4).

² See description in *Hampshire Advertiser*, April 27th, 1839, of which a summary is given below, toward the close of this section.

³ Since Easter Sunday can fall, according to the inscrutable decrees of the ecclesiastical authorities, on any date from March 22nd to April 25th inclusive, it follows that the “Law-day,” or day of meeting of the court leet, can vary from April 14th to May 18th. The following are the dates of the first ten recorded meetings of the court:—

	EASTER SUNDAY.		HOCK TUESDAY.		COURT LEET DAY.	
1550	..	April 6th	..	April 22nd	..	April 29th
1551	..	March 29th	..	April 14th	..	April 21st
1566	..	April 14th	..	April 30th	..	May 7th
1569	..	April 10th	..	April 26th	..	May 3rd
1571	..	April 15th	..	May 1st	..	May 8th
1573	..	March 22nd	..	April 7th	..	April 14th
1574	..	April 11th	..	April 27th	..	May 4th
1575	..	April 3rd	..	April 19th	..	April 26th
1576	..	April 22nd	..	May 8th	..	May 15th
1577	..	April 7th	..	April 23rd	..	April 30th

attributed to the same root as the German "hoch," meaning "high," and has thus been supposed to mean simply high day or holiday. It has also been held to be related to the German "hocken," to bind, and is thus considered to have reference to the rough horseplay which in old times marked the season. For when we first, among records of the fourteenth century,¹ meet with the word Hock Tuesday, it is, as it probably had been for a long preceding period, the name not only of "an important term day on which rents were paid," but also of "a popular festival signalised by the collection of money for parish purposes by roughly humorous methods."² Until 1406 the practice of the collectors was to seize passers-by, bind them with ropes, and demand a small payment for release. From that year prohibitions began to be issued against the rough usage of the binding,³ and accordingly "recourse was had to the plan of stretching ropes or chains across the streets and ways to stop passers for the same purpose."⁴ How far back into antiquity the term "Hock," and the revels associated with the season which it denoted, carry us, it is impossible to say; but it would appear that it is at least as far as the Danish conquest of the eleventh century.⁵

§5. Procedure.

I will not in this place anticipate the detailed treatment of the judicial procedure of the court as given in a subsequent chapter, but will merely say that this procedure is eloquent of the judicial reconstructions of Henry II., Edward I., and the mediæval lawyers.

1 Cf. A.D. 1369: "Die Martis proximo post quindenam Paschæ qui vocatur Hokeday," *Madox Formulæ*, p. 226.

2 *Oz, Eng. Dict.*, s. v. *Hock*.

3 See Riley *Memorials of London*, p. 562, and compare Leland *Collectanea*, p. 299 (A.D. 1450), "Sic monentur ut ab hujusmodi litigationibus et ludis inhonestis diebus hactenus usatis, vocatis communiter Hocdayes, ut prædictur, cessent."

4 A reference to the practice of collecting money seems to be made in the Southampton records of the year 1602. The jurors having presented that "the washowse in Houndwell needeth to be paved," a marginal note adds "The gathering by ye wyffes at hocktyd," (1602, § 11). The London *Daily Chronicle*, of May 4th, 1905, contains the following interesting note:—"It seems as though the germ of that feminine and parochial institution known as a 'Sale of Work' were to be found in this ancient Hocketide; for the Hoke alms were mostly collected by women, and were always devoted to the expenses of the local church. In the Lambeth Book we have the entry:—'1556-1557, Item of Godman Rundell's wife, Godman Jackson's wife, and Godman Tegg, for Hockce money by them received to the use of the Church, xij shill.' And in the registers of St. Peter's-in-the-East, Oxford, there is a record that it was usual to raise money for repairing the church by keeping a Hocketyde, 'the benefit of which was very great, as, for instance, gained by the Hocketyde, anno 1664, the sume of £14.'"

5 *Speed History of Great Britain*, VIII., § 11, 392; and Brand *Popular Antiquities*, I., 185.

CHAPTER XX.—DOCUMENTARY SIDELIGHTS.

§1.—Introductory.

Besides these survivals of the old unrecorded days which have, in one shape or another, come down to our own time, we are fortunate in being able to find three or four scattered references to the court in the earlier borough documents.

§2.—An Indenture of A.D. 1397.

An indenture of a final concord made between the prior and convent of St. Denis near Southampton on the one part, and the mayor and community of the town of Southampton of the other part, contains the agreement that the tenants of the said prior and convent “apud villatam de Porteswoda commoraturi facient sectas suas semel vel bis annuatim ad visus franc’ pleg’ tenendos per majorem et ballivos ville predicte vel successores suos apud le Cutthorn vel alibi.”¹ This entry is interesting, first, as containing the only direct suggestion that the Southampton court leet was ever held more than once a year;² secondly, as designating the court “the view of frankpledge,” and as mentioning Cutthorn as its place of meeting.

§3.—Charters from Henry IV. and his Successors.

A charter of Henry IV., dated 1401, concedes to the mayor and burgesses for ever “visum de franciplegio et omnia quæ ad illum pertinent.” This grant is renewed and confirmed in similar terms in charters of 4 Hen. VI. (1426), and 1 Edward IV. (1461), and again in the important charter of 16 Charles I. (1640), under which Southampton continued to be governed till the coming into force of the *Municipal Corporations Act* of 1835.

¹ That is “shall do suit once or twice a year at the view of frankpledge held by the mayor and balliffs of Southampton at Cutthorn or elsewhere.” Cf. *Hist. MSS. Com. Report XI, Appendix III.*, p. 74.

² Unless the expression in the title, “pro termino de Hock,” be held to imply the complementary expression “pro termino Sancti Michaelis.”

§4.—The Steward's Book under date A.D. 1499.

The steward's book for 14 Henry VII. contains the following account of the "Expenses of the Lawday at Cutthorn" in that year:—

	s.	d.		s.	d.
A croppe of beffe ...	2	4	Two gallons claret wyne	1	4
Four leggs of mutton	1	0	Orengys ...	0	2
do. do.	1	0	Musterd and vinegar ...	0	2
Three dos. of bred ...	3	0	Two hundred of wood	1	4
Half a barrell doble beer	1	8	A man to dresse the		
Half a barrell fyn hyl			mette ...	0	8
beer ...	1	0	Two poor men to turn	0	3
Ten gallons peny ale...	0	10	Two poor boys ...	0	2
Twelve chekens ...	1	0	A carte to Cutthorn ...	0	8
Four pyggs ...	2	0	For whyt dysches ...	0	8
Two lambys ...	2	0	Making a both ...	0	3
Butter and eggs ...	0	8	Hyre of two garnysche		
Chese ...	0	3	off Wessell ...	0	8
Salt ...	0	1	The 12 men when they		
Half a bushel of flowre	0	8	gave their verdyt ...	2	0
Half a pound of peper	0	8	Two men beyring the		
Saffryn, cloves, and mace	0	4	two long planks, and		
Preuyns and raysyns ...	0	8	setting the two barrys	0	4

The magnitude of the provision indicates a feast on a large and liberal scale, while the fact that one of the few surviving references to the court dating from the period before the rolls begin, should consist of this detailed description of the great meal, very happily suggests, what is indeed the truth, that, throughout the history of the court, the leet dinner has always been one of the most prominent features—and quite the most popular feature—of leet jurisdiction.

We now pass on to the period concerning which the court rolls are our chief source of information.

SECTION II.—(b) The Period of the Records.¹

CHAPTER XXI.—THE RECORDS OF THE YEARS 1550-1750.

§1.—Introductory.

The rolls of the Southampton court leet extend, as I have already mentioned, in a series which, though broken in places, covers fairly completely and uniformly the three hundred and fifty years which separate the reign of Edward VI. from that of Edward VII. The most serious breach occurs near the beginning; we have no rolls for the years 1552-1565 inclusive. The most perfect continuity prevails towards the end; the carefully preserved, type-written records of the names of the jurors who met year by year, during the late Victorian era, to listen to the reading of the bounds, fulfil the most exact requirements of archivists.²

§2.—Summary of Contents.

The contents of the typical court roll of the period (1550-1750) with which I am now specially dealing are as follows:—

(1) *The Title*, giving the date and place of meeting, the name of the mayor for the year, etc.

¹ Under this heading, as I explained above (p. 161, Note), I treat, broadly speaking, the two centuries 1550-1750. Although the records exist for the further period, from 1750 to the present day, and are added to year by year, I make this arbitrary limitation for two reasons; first, because for the subsequent period, beginning 1750, the records are almost worthless, being in most cases mere catalogues of forgotten names and repetitions of familiar boundary marks; secondly, because soon after 1760 we come to the time when contemporary historians (e.g., Speed, 1770), and the newspaper press (e.g., *Hampshire Chronicle*, 1774), begin to give us descriptions of the court from the outside. To these descriptions we owe most of our knowledge of the last century and a half of the court's history. This period, then, I term, distinctively, "The Period of the Reporters." The references throughout this section are, unless otherwise stated, to the *Southampton Court Leet Records, Vol. I. (1560-1694)*, published by the Southampton Record Society. In each case year and number of entry are given, thus: "1550, § 1" The records for the year following 1624 are as yet unpublished, but the Society hopes to issue them in due course. They have been freely consulted in manuscript during the preparation of this essay, but no more precise reference than the year can be given.

² The following table gives a summary account of the approximate numbers of extant rolls. The rolls of each year are entered in a separate book, constructed by stitching together a dozen or more double sheets of foolscap paper.

Edward VI. (1547-1553) ..	2	out of a possible 6	William III. (1689-1702) ..	5	out of a possible 14
Mary (1553-1558) ..	0	" " 5	Anne (1702-1714) ..	10	" " 12
Elizabeth (1558-1603) ..	21	" " 45	George I. (1714-1727) ..	4	" " 13
James I. (1603-1624) ..	13	" " 21	George II. (1727-1760) ..	29	" " 33
Charles I. (1624-1649) ..	17	" " 25	George III. (1760-1820) ..	50	" " 60
Commonwealth (1649-1660) ..	6	" " 11	George IV. (1820-1830) ..	6	" " 10
Charles II. (1660-1686) ..	8	" " 25	William IV. (1830-1837) ..	4	" " 7
James II. (1686-1688) ..	1	" " 3	Victoria (1837-1901) ..	64	" " 64

(2) *The List of Freesuitors*, averaging about fifty in number.

(3) *The Names of the Beadles* appointed for the year, two for each of the six parishes or wards (as they are indifferently called) into which the town was then divided,¹ and one—known as the alderman of Portswood—for the outlying manor which had formerly belonged to the priory of St. Denis.

(4) *The Panel of Jurors*, who, in spite of the fact that these are never less than thirteen and rarely less than fifteen, are commonly called, especially in the earlier books, “the twelve men.”

(5) *List of Payments “For Stall and Art,”* averaging some 350 items, and occupying eight or more pages of the manuscript.²

(6) *The Presentments of the Jurors*, which, of course, fill the bulk of the book.

(7) *The Names of Persons appointed to act as Overseers and Drivers of the Common* during the ensuing year. There were usually four overseers, chosen out of the leet jurors, and from eight to twelve drivers, men of lowlier position, selected one or two from each ward.

(8) *The Signatures of the Jurors*.

§3.—Two Notable Books.

The books which show the most notable variation from this type are the two earliest, viz., those for the isolated years 1550 and 1551. Their titles give no indication of the place of meeting, and they contain no lists of freesuitors; in which respects they have no fellow. Then, again, in their “stall and art” lists, in addition to the names of the payers and the amounts of the payments, they give in many cases statements of the ground

¹ The parishes or wards were: (1) Holyrood, (2) St. Michael's and St. John's, (3) St. Laurence's, (4) All Saints within the Bar, (5) All Saints without the Bar, (6) Bag Row and East Street.

² *Payments for Stall and Art (pro stallagio et arte)* would seem to be sums of money—usually 3d., but occasionally as high as 20/-, and in one instance 40/-—demanded by the wardens of the merchant guild from persons who are neither burgesses nor of the franchise, in return for a licence to set up a stall, or “open a window,” and practise an art, or craft, or trade in Southampton for one year. See *Southampton Court Leet Records*, Vol. I., pp. 1-2, 20-21, and 35. The presence of these lists in the “lawday” book is a clear indication on the one hand of the close connection between the “lawday” and the guild, and on the other hand of its extreme dissimilarity from the court leet of legal theory. A remarkable feature of the lists is their changefulness; no two contain even approximately the same names. They convey the impression that the commonality of Southampton, even in Tudor and Stuart times, was exceedingly fluctuating. To give one example: the list for the parish or ward of Holyrood in 1587 contains 54 names; of these only 22 appear in the next-preceding extant list, viz., that for 1583, only 10 in the 1577 list, and only 2 in that of 1569. In a court leet presentment 1624 (§ 58) we find an indication that the payments for stall and art went to provide the feastings and festivities of the Outthorn ceremony. The *Assembly Book*, under date Jan. 28, 1647, authorises the sergeants at mace to collect and distrain for arrears of stall and art. In the court leet book for 1761 the list is entered as usual; but it is all scored out, and in no later book does it appear at all.

of liability.¹ These illuminating statements are almost completely absent from the next extant roll, that of 1566, and by 1571 they have disappeared altogether. Finally, the book for 1550 opens with a lengthy report of an "Inquiry concerning the Salt Marsh." This seems entirely out of place in a court leet book, and as a matter of fact it would have been entered, as a rule, either in the great book of municipal record, the "Black Book," or in the borough's commonplace "Books of Examinations and Depositions." All these peculiar features seem to suggest the conclusion that our first glimpse of the court leet in operation, in the middle of the sixteenth century, reveals to us a court whose proceedings were only just beginning to be put into writing in a systematic and permanent form. The scribe, it would seem, did not know precisely what he ought to include, what to exclude; nay, further, it would appear to have been not quite certain who ought to be the scribe, for in 1550 Thomas Muklow, the sergeant, having been ordered to write the book, and having got some one "beinge none of the twelve nor of the guild" to do it for him, was fined and imprisoned and was told that "iff he badde done yt wilfully" instead of, as was charitably supposed, in ignorance, he would have been "worthe to be disgraded" (1550, § 83). The conclusion that few of the earlier proceedings had been put into writing appears to be supported by the very fulness in these early extant books of the orders for the commons and for the cattle upon them. The orders² must in substance have been in force time out of mind; it cannot have been left to sixteenth century jurors to initiate legislation concerning the primary problems of a village community. Can they have been doing more than make a record, perhaps for the first time, of established traditions and customs? If it be true that there were not many court leet books anterior to 1550, is it possible in any way to connect the beginning of the keeping of the records of the court with the beginning of the keeping of the registers of churches, which we trace to the order of Thomas Cromwell, Earl of Essex and Vicar-General of England, issued in September, 1538?³ Were precept and example contagious?⁴ Leaving the question unanswered, let us proceed to look a little more in detail at the points of interest presented by the records.

¹ These statements are in Latin in 1550, but in English the following year, e.g. in 1550, "Willms Christmas quia est communis hostilagarius et vendit pabulum equinum et est brassiator cerevisie," 2/-; but in 1551, "Wyllm Chrystemasse who duthe kepe ostlege and sellythe haye and ys an al-bruar, 2/-."

² Cf. 1550, § 7, as to the number of beasts a burgess could place on the common.

³ Cf. Cowell *Interpreter*, s. v. *Register*.

⁴ The *Manchester Court Leet Records* begin 1551—a curious coincidence.

CHAPTER XXII.—THE TITLE AND WHAT IT TELLS US.

§1.—Form and Language.

The title of the court as, in 1550, the "lawday" emerges from the darkness of the unrecorded period, is as follows:¹—"Villa Suthth [Southampton]: Cur [curia] legal [legalis] Dm [domini] Regs [regis] ibm [ibidem] tent [tenta] coram Edmundo Bys maiore ville [villæ] Suthth [Southamptonæ] pdce [prædictæ] ac alderman [aldermano] et discret [discreto] ville [villæ] pdce [prædictæ] ac al [aliis] alderman [aldermanis] et discret [discretis] p [pro] trmo [termino] Ho . . . [Hock] videlt [videlicet] die marts [martis] px [proximo] post Hock-tuesdaye scdm [secundum] cos [consuetudinem] eiusdm [ejusdem] ville [villæ] anno regni Edwardi sexti dei gra [gratia] angl [Angliæ] ffraunc [Franciæ] et hibernie [Hiberniæ] regs [regis] fidei defens [defensoris] ac in tra [terra] eccleie [ecclesiæ] Anglicane [Anglicanæ] & hibernice [Hibernicæ] supmi [supremi] capits [capitis] tercio." This may be translated as:—*Town of Southampton*: The Law Court of the Lord King there held before Edmund Byshop, Mayor and Alderman and Discreet of the afore-mentioned town of Southampton, and the other Aldermen and Discreets of the said town for the term of Hock, viz., on Tuesday [April 29th] next after Hock Tuesday [April 22nd] according to the custom of the same town, in the third year of the reign of Edward the Sixth by the Grace of God King of England, France, and Ireland, defender of the faith and supreme head on earth of the Church of England and Ireland.

It will be observed that the precise place of meeting within the borough boundaries is not mentioned. This omission is supplied in all the other extant books except that of 1551, e.g., 1566, "Cuttethorn: curia legalis dominæ reginæ ibidem tenta," etc. In the book of 1600 first appears the addition (after the words "curia legalis") of "sive visus ffranci pledgii," which in and from 1603 is changed to "*et visus ffranci pledgii*." In the records of the Commonwealth period, in accordance with a general parliamentary order dated Nov. 22nd, 1649,² the titles

¹ It is impossible without special type to represent the abbreviations and contractions of the MS. Hence in this transcription the nearest approximation to the MS. which ordinary type allows is given, and the full expansion is added in square brackets.

² "An Act for turning the Books of the Law and all proces and proceedings in Courts of Justice into English."

(as also all other entries) are in English, e.g., 1652¹:—"The Towne and County of Southampton: The Court Leete of the Keepers of y^e liberties of England by authoritie of Parliament wth the View of Francpledge of the Towne and County afore-sayd held at the Cutted Thorne for the same Towne and County before Joseph De La Motte Esq. Maior of the s^d Towne and County, as allsoe the Aldermen and Discreetes of y^e same Towne for the terme after Hock Tuesday accordinge to the custome of the sayd Towne time out of mind hitherto used and approved on Tuesday the eleaventh day of May in y^e yeare of o^r Lord God one thousand six hundred fiftie two." Latin was resumed with loyal zeal at the Restoration and was continued till 1731; but from that date Whiggery and common sense have secured a reversion to the republican precedent.

The titles of the successive books give us information concerning, first, the nature of the court; secondly, the lordship of the court; thirdly, the place of its meeting; and fourthly, the date of its meeting.

§2.—The Nature of the Court.

The court is invariably styled "*curia legalis domini regis*" or "*dominæ reginæ*"; that is, it is described, not as a court inherent in a borough, but as one deriving its authority from the sovereign, and doing his business. In its active days it exercised the franchise of view of frankpledge; it held the assizes of bread and ale; it assayed weights and measures; waifs and strays and treasure trove came within its purview. Now these royal franchises, when attached to a manorial court, usually gave to the sessions of the court at which they were exercised, in legal phraseology, the distinctive designation of "leet." The court of Cutthorn was undoubtedly a court exercising "leet" jurisdiction. But when was the name "court leet" first applied to it? I have found no instance in the records earlier than 1596.² In the older rolls the proper term is "lawday."³ Is it possible that the name "court leet" can have been applied only late and by analogy, and, indeed, that its adoption may have been due to that unifying and standardising of local jurisdiction which took place in the Tudor period, owing to the printing of the court keepers' guides, and to the jealous invigilation of the King's Bench?

¹ The title in 1650 is in Latin; the book for 1651 is not extant.

² Cf. 1596, § 84: "Manle of the Towne Burgeses . . . did absent themselves from the Courte Leet last holden at Cutthorne."

³ Cf. 1550, § 34; 1551, §§ 9 and 13.

§3.—The Lordship and Presidency of the Leet.

The position which, in the case of a manorial court leet, is occupied by the lord of the manor is, in the case of the Cutthorn court, occupied, not by any single individual, but by the "mayor, bailiffs, and burgesses" of the borough. The corporation is lord of the leet.¹ Moreover, not only is the corporation the lord of the leet, but the court is also nominally held "*coram majore villæ necnon aldermanis et discretis.*" This is notable; for in the leet of legal theory, not the lord, but his steward, a man learned in the law, holds, and indeed constitutes, the court. Here, obviously, is room for conflict between practice and theory. The actual presidency of the court seems, however, in the sixteenth and seventeenth centuries, as at the present day, to have been a matter regarded as of little importance, left largely to chance, and unrecorded. Then, as now, probably any of the persons included in the formula, "mayor, aldermen and discreets," could preside, in company with his fellows. We know that the presence of the mayor was not then, as it is not now, regarded as essential; for in 1579, at a court held "*coram Johanno Jackson majore villæ prædictæ ac aldermanis et discretis ejusdem,*" John Jackson was fined threepence for non-attendance.² We shall see later on, when we come to examine the functions and the procedure of the court, why the matter of the presidency has been, in recorded times, so immaterial; for we shall see how completely the court has lost whatever independent powers it may once have possessed, and how it has become the mere agent and servant of the municipal assembly, doing little more than prepare business for the consideration of its lord.

§4.—The Steward.

At the present day it is the town clerk who is always appointed steward. If, starting from the present, we pursue our course backwards, we find that in the eighteenth century the same official was generally selected. Thus an affidavit made in

¹ Cf. *Charters* (soon to be published by the Southampton Record Society), 2 Hen. IV., 4 Hen. VI., 1 Ed. IV., and 16 Car. I. The last mentioned—which remained the governing charter till the municipal reform of 1835—runs: "*Volumus . . . concedimus et confirmamus præfatis majori, ballivis, et burgensibus et successoribus suis quod ipsi habeant in perpetuum . . . visum francplegii ac omnia quæ ad visum hujusmodi pertinent infra villam prædictam (ac) libertates et prædictas ejusdem.*"

² In 1590 the title speaks of the court as held, on May 12th, "*coram Petro Stoner,*" etc.; but the said Peter Stoner had departed this life early in the preceding January. See *Davies Hist. Southampton*, p. 177.

the King's Bench, May 23rd, 1770,¹ speaks of Charles Le Gay as having been "elected and appointed town clerk of the said town and steward of the said court [leet] in the year of our Lord, 1767"; while the covers of the court leet books from 1776 onwards supply confirmatory evidence—they bear the name of the steward, who in every case was the town clerk at the time.² The seventeenth century furnishes a further example. The titles of the six extant books of the period 1613-20 all conclude with the phrase "Ricardo Pigeon tunc Senescallo," and we learn from the *Steward's Book* that Richard Pigeon was town clerk in 1610.³

When, however, on our retrogressive course, we come to the year 1604, we find an unmistakable and significant exception to what was later the rule. For in the book for 1604 a certain John Friar is entered as one of the jurors, and at the end he signs his name as such; but on the back page of the cover he proclaims himself to be "publicus notarius oppidi clericus communis recordorum registrarius et Southamptonensis secretarius generalis."

I strongly suspect that the unprecedented appearance of the town clerk's name in the title in 1613 is an indication of the influence of legal theory; and that it marks an effort of the town clerk, not only to monopolise the office of steward of the court, but also to secure for himself that position of supremacy in the court, and to assert for the court that position of independence and power in the borough which could be claimed on the authority of the court keepers' guides.

§5.—The Place of Meeting.

The records from 1566, when the place of meeting is first specifically mentioned in the title, down to 1616, show that year by year (with the single exception of 1585) the court was held at Cutthorn, its ancient assembly-place.⁴ But in the year 1616-17 the lords of the leet resolved to move the court from Cutthorn to the Guildhall over the Bargate, and we are, happily, not left in doubt as to the causes of their determination.

¹ Bound up for some reason with the court leet book for 1652.

² E.g., the books of 1776-86 inclusive give as steward William Daman, who was town clerk from 1774 to 1787, while those of 1787-1803 inclusive give Thomas Ridding, who was town clerk from 1787 to 1804.

³ Cf. Davies *Hist. Southampton*, p. 187. Mr. Davies, it is true, names Edward Phillater as town clerk in 1615, but by a curious slip he has thus done an injustice to a worthy man who was really the town-cook.

⁴ Spelled variously; e.g., Cuttethorn (1566), Oothorne (1569), Cutedthorne (1581), and Cuted Thorne (1589).

The court roll of 1616 contains the ominous entry: "Whereas for manie yeares past a great disorder hath benn at Cutthorne at divers tymes espetially by the ruder sort of people in thrunginge amongst the officers and s^rjeants there attendinge, we desier that the next yeare order maye be taken by the biddels care & dillegeaunce to keep them out." The *Assembly Book* of the corporation, under date April 18th, 1617, supplies the sequel: "This daie it is agreed and thought fitt for dyvers good causes and consideracons that the court leete shall bee this yere kept at and in the towne hall of this towne of Southton and not at Cutte thorne as heretofore the same hath beene. And that after the chardge shall be geven everie person shall dyne at his owne howse w^{thout} anie chardge to this towne and further that in the afternoone after dynner M^r Mayor and the rest w^{ch} have heretofore riden about the bounds and liberties of this towne shall (as heretofore they have used to doe) ride aboute the same."¹ Accordingly, in 1617 and every recorded year² onward, to and including 1624, the court met at the Guild- (or Town-) hall. But not without much murmuring of the people. The jurors of 1620 made a presentment: "That the doore at Cutted thorne is broken and in decaye w^{ch} wee desier may be amended and alsoe that from hence forwardes the courte leete maye be ther helde as hathe bene accustomed vnlesse ther be urgent occasion to the contrarie, tempest, sicknes, or the like, for we fynde the vnfrequentinge therof doth breed a murmer in the comon sorte of people in regarde manie lokes for a little recreation at that tyme and some other contents by reason of the stal and arte."³ This appeal of the 1620 jurors having been ignored, their successors of 1624 returned to the charge, and said: "We p^{nte} to yo^r good consideracons that according to the auncient order & custome tyme out of mynde vsed & approved the courte of leete & lawdaie mighte be kepte & helde at Cutted Thorne w^{hin} the jurisdiccion of this our towne of South^{amp}ton for that manie people of this towne woulde willinglie make theire resorte & apperaunce thither & the comone^s were willinge to paie the stal & arte where nowe they murmure & grudge to see soe auncient a courte from that place wthdrawne & not kepte." The lords of the leet were not unmindful of this reiterated appeal, and accordingly we find in

¹ For this and other quotations from the *Assembly Books* I am indebted to my friend and sometime pupil, Mr. F. W. Camfield, M.A.

² The records for 1621 and 1622 are missing.

³ It will be observed that what to one party appeared to be "a great disorder," to the other assumed the innocent guise of "a little recreation."

the *Assembly Book*, under date May 6th, 1625: "This day the court leete is appointed to be holden at Cutthorne and Tuesday next the tenth of this instant May is declared to be the day for holding the same according to the ancient custome."¹ There is a similar entry for 1626 (dated April 21st). Concerning the lawday of 1627, the *Assembly Book* is silent, but we find from the court roll that the session was held at the Guildhall once more. The year 1628, at any rate, saw a deliberate return thither: "It is this day agreed," records the *Assembly Book* under April 26th, "that the court leete shalbe holden this yeare at the Townehall and Tuesday the sixth of May next is the day for holding thereof." For another half-century this oscillation continued. The interests of the lords of the leet and the wishes of the resiant commonalty apparently pulled in different directions. On the one hand, the populace liked the "little recreation" which the gathering at Cutthorn afforded, while their worships dreaded the "great disorder" into which it degenerated. On the other hand, as appears very fully from a series of entries in the *Assembly Book* for the years 1643-52, the meeting at Cutthorn involved the provision by the lords of an expensive meal, while, when the court was held at the Guildhall, each and every man went to his own house to dine at his own charge. Thus, April 14th, 1643: "It is this day agreed and thought fitt that the court leete shall bee kept this yeare at the Guildhall of this towne and noe dinner provided."² But, April 10th, 1646: "It is this day ordered that the court leete shall this yere bee kept at cutte thorne and M^r Steward is allowed towards a dinner twenty nobles."³

¹ The title of the court leet book for this year, 1625, furnishes an interesting commentary on this resolution. It is in the hand-writing—unmistakably familiar to those who have read the various borough documents of the second quarter of the seventeenth century—of John Smith, town clerk, and therefore presumably steward of the court. This title, together with the list of freesultors and the suggested list of the beadles, had evidently been written out beforehand in anticipation of the law-day and in expectation that the court would be held in the Guildhall as in the preceding years. For, as originally written, it runs: "Curia legalis, etc, tenta . . . in Gulhald (*sic*) . . . coram venerabilli viro Johanne Elzie." The resolution of the corporation on May 6th necessitated the exclusion of "in Gulhald" and the substitution of "apud Cutted Thorne." But it did not necessitate the exclusion of the words "venerabilli viro" before the name of the mayor. Yet Mr. John Smith excised them. Must we assume that Mr. John Elzie had been a prime mover in the agitation, successful only four days before the day of session, for the return to Cutthorn, and that consequently Mr. John Smith's respect for him had sensibly diminished?

² There are similar entries also May 3rd, 1644, and April 15th, 1645.

³ There are similar entries also April 25th, 1647, April 8th, 1648, April 6th, 1649, April 26th, 1650, April 11th, 1651, and April 30th, 1652. The amounts allowed for the cost of the dinner varied somewhat. They were: 1647, "twenty nobles" (*i.e.*, £6/13/4); 1648, £8, "in respect provisions are very deare"; 1650, £8; 1651, £8/10/0; 1652, £7/0/0, which, however, was increased by a vote of July 23rd to £7/18/4, obviously the exact amount of the bill. In connection with the feast of 1651 an additional entry is made which must not be omitted here: "April 21st, 1651.—There was taken out of the chest this day these peeces of plate followinge viz, twoe salts, two daggon bottles with ohaynes and covers, three beere bowles and one butter dish to be used at Cut Thorne. The 23rd of the same month the sayd plate was brought in and layd up into the great chest againe in the Auditehouse." Where is it now?

Thus for fifty years did the assembly swing backwards and forwards, from Cutthorn to the Guildhall, and from the Guildhall again to Cutthorn, and perhaps we may see in these movements some indication of a conflict between a struggling commonalty and a conquering oligarchy.¹ One thing, at any rate, is obvious: the court could never have been held at the Guildhall at all if it had remained a great popular gathering to which every resiant actually came. The Guildhall might have accommodated from two to three hundred persons in those days, when it had not been divided into its present two compartments; but at the end of the sixteenth century Southampton had far more resiants than this. It was able to provide 490 men-at-arms (1561), had 423 householders (1589), and was estimated (1596) to contain a total population of 4200. That the court so early as 1585 was held in the Guildhall suggests that even then it had declined from its pure theory of suit real.

However that may be, the last recorded instance of a session at Cutthorn is that of 1670. There may have been one or two later instances, for the records of the next four years are wanting and the subsequent series is very incomplete. But all the extant records from 1675 onwards² give in their titles the Guildhall as the place of meeting; until, in 1856, they show that another move was made to the Audit House (otherwise called the Municipal Buildings), where the court is still held year by year.

§6.—The Date of Meeting.

This is defined in the titles of the earlier rolls as “Die martis proximo post Hock-Tuesday”; that is the first Tuesday after Hock-Tuesday, or twenty-three days after Easter Sunday. The date has continued unchanged to the present day, although the expression “Hock-Tuesday” is no longer employed.

¹ The following table gives the full list, 1625-70, so far as it can be reconstructed from the titles of the successive rolls, supplemented by the entries in the *Assembly Book*:—

At Cutthorn, 1625, 26, 40, 46, 47, 49, 50, 51, 52, 54, 58, 66, 67, 68, 70.

In the Guildhall, 1627, 28, 29, 30, 33, 35, 37, 38, 39, 43, 44, 45, 56, 66.

Unrecorded, 1631, 32, 34, 36, 41, 42, 53, 55, 57, 59, 60, 61, 62, 63, 64, 69.

Doubtful, 1648. The *Assembly Book* gives the order for Cutthorn; the title states that the court was held in the Guildhall.

² To the end of Anne's reign the extant records are for the years 1675, 80, 82-94, 96, and 1701, 02, 03, 04, 05, 06, 10, 11, 13.

CHAPTER XXIII.—THE SUITORS.

§1.—Introductory.

We have already seen from our study of the court leet in legal theory that suit to the court is held to be "suit real," and that it is owed by all resiants (except such as can claim statutory or customary exemption), and by none save resiants. Hence we should expect to find, in examining the records of the Southampton court, that all the inhabitants, and only the inhabitants, are required to be present, and, further, that all the inhabitants are required to be present for one and the same reason, viz., in respect of their resiancy within the borough limits. Now, part of this expectation is fulfilled, and part is not. On the one hand we find, as we are prepared to find, that the inhabitants in general of the borough are expected to attend. But, on the other hand, we find, what we are *not* prepared for, viz., that persons not resiant are required to answer to their names, and, moreover, that other persons, though resiant, are required to answer not in respect of resiancy, but by reason of tenure or of oath. This fact is one of many which force upon us the conclusion that the Southampton court was at one time much more than the "court leet" of legal theory, that it was a court of wide and various jurisdiction of which the leet functions were merely a fragment, and of which they never at any time became the whole.

It seems at first sight possible, from the evidence which is before us, to distinguish no less than four classes of suitors to the court, viz., resiants, burgesses, freesuitors, and freeholders. I think, however, that examination will reduce them to two, viz., resiants and freesuitors.

§2.—The Resiants.

It appears that the beadles of the various wards, together with their colleague, the so-called alderman of Portswood, were, during the period with which we are now dealing, expected to bring to Cutthorn rolls of the inhabitants of their districts, which rolls they called, and, having marked the names of the absentees, handed to the jurors for presentment. Thus in 1604 the jurors said (§ 110): "Wee doe p^rsent manye the inhabitants

of this towne were absent at Cutted thorne whose names wee refer you to the beddells rolls & doe amerce them ev^{er}ye howsholder at 3d. a pece for there absence." Again, next year (1605, § 56): "We present manie thinhabitants wth there s^{er}vaunts were absent at the lawdaye referring yo^u to the sev^{er}all roles for there names, w^{ch} wth this our booke we deliver vnto yo^u."¹ Sometimes the beadles neglected their duty and were presented for punishment. Thus in 1604 one of the beadles of All Saint's Above the Bar came in for severe treatment (§ 86): "We present that George Gardner the biddell above barr brought not to Cutthorne nether sent his role of the inhabitants of theast side of the streat above the barr, thither as farr extendinge as from hills howse on right [east] mawdlins vnto the Lees howse the butcher, as he was warned by the s^{er}iaunt to doe, by reason whereof we could not call the names of anie of those p^{er}sons whoe were either p^{re}sent or absent, w^{ch} is not onely a great abuse in him but so evill an example as if he showld goe vn-punished others of his office will not sticke to doe the like hereafter, we therefore for his amercem^{en}t have fined him at 2/-, and for his corporall punishm^{en}t referr it to your considerations w^{ch} we desier may be donn." A similar complaint was made in 1611 concerning the alderman of Portswood, who was fined 5/- (§ 44), and the beadles of Holyrood (§ 71), who were fined 2/6 each.²

§3.—The Burgesses (?).

Although the burgesses were resiants—they forfeited their privileges if they were absent from the town for a year and a day—yet they were under a peculiar obligation, not based on their resiancy, to attend the annual ceremony at Cutthorn. It was an obligation based on their "corporal oath," which bound them to "attend the mayor for the time being at all sessions and other assemblies usual."³ Hence, while the fine levied upon an ordinary householder for absence was three-pence (cf. 1604, § 110) or twopence (cf. 1638, quoted below⁴), the fine levied upon a burgess was commonly half-a-crown. The following presentments illustrate the current ideas of the duties of the burgesses. The first comes from 1594 (§ 37): "we present that we thincke

¹ Cf. also 1613, § 90, and 1615, § 118. The books of 1638 and many subsequent years contain the entry: "For the commoners which were absent at court leete for their names we referr you to the beddles rowles and amerce them at 2d. a peeco."

² Cf. also 1613, § 16, and 1615, § 19.

³ For the oath in full, see Davies *History of Southampton*, p. 197.

⁴ See note 1 on this page.

it a discredit that bourgeses of this towne should come vnto the place of Cuthorne appointed for our lawedaye on foote, but we thinke it requesite that ev^{er}ye bourgese doe attend thither m^r. mayo^r on horsbacke as heertofore hath beene acustumed vppon paine of fforfeitur of ev^{er}y man that shall goe afoote 2/6 a peece, and in lyke order to retourne wth m^r. maior the circuit of the townes lyberties acordingly and further be it appointed that noe burgiss take anye jorneye to be absent at the lawedaye vnless he aske leue of m^r. maior 2 or 3 dayes before he shall so take his jorneye." The second is dated two years later (1596, § 84): "we p^resent that manie of the towne burgesses nether regardinge there corporall oathes taken for attendance at all daies of assemblie vppon mr. maior & the aldermen, there alleagaunce to the quenes ma^{jestie}, nor there dueties to the state and good gov^{ern}m^{ent} of the towne, but either contemptuouslie repininge or disobedientlie regarding the place, office and p^resence of yo^r wo^{rp} and the dignitie of the court did absent themselves from the courte leet last holden at Cutthorne and not havinge anie reasonable excuse for there absence did abide and remayne in the towne vpp and downe about there private buisnes, namely, John Gregorie, John Greene, Richard Singleton, John Andrewes, William Bussell, John Delisle, Hughe Dervall, and Wm. Marrinell, wherefore we have amersed them hev^{er}ie of them in 2/6 a peece. Also Mr. fflashin, Mr. John Caplin, Mr. John Ellzie, Thomas Sherwoode, Roger Longe and David Morrell, who whether they were then in the towne or out of the towne we certainly knowe not, wherefore they are amersed in 12d. a peece, w^{ch} we desier may be duellie leavied wthout remorse."

The books of many succeeding years contain lists of absent burgesses, with details of the fines imposed,¹ and it is clear that, in addition to the ordinary resiant rolls, the rolls of burgesses were scrutinised with special and peculiar exactness, and that the failure of a burgess to attend was regarded not only as the violation of a general duty, but also as the breach of a personal oath, which demanded particular presentment and an unusually heavy fine. If, however, we hesitate to enlarge the grounds of suit, and feel disinclined to admit that the burgesses owed suit to the court except in their capacity of resiants, we can do so by contending that their peculiar obligation did not consist of

¹ Cf. in the books already published, 1601, § 99, seven burgesses fined 2/6 each; 1603, § 31, four 2/6, three, 3/4; 1604, § 89, fifteen 2/6; 1613, § 95, nineteen 2/6; 1616, § 124, fourteen 2/6; 1618, § 97, twenty-one 2/6; 1617, § 91, ten 2/6, and in addition the sheriff £3, and the sheriff-designate 40/-; 1618, § 100, eight 2/6; 1619, § 79, seven 2/6; 1620, § 63, fifteen from 1/- to 2/-; 1623, § 47, three 5/- and two 1/-.

suit, but of *service*. The burgesses were, indeed, in a real sense *officials*, on a par with constables and beadles; they were bound to accompany the mayor on his perambulations, and from them the leet jurors were by ancient custom drawn. Witness the following important entry from the book of 1652: "Wee present that the jury for the service of this coort leet hath alwayes accordinge to y^e ancient and lawdable custome of this towne tyme out of minde hitherto used and aprooved consisted of the burgesses onely, desendinge in order from the burgesse who for the present yeare beinge high-sheriffe of the town and cownty was, is, and ought to be fforeman of y^e s^d jury, and that for want of a competent and convenient number of burgesses as well the service which ought to be performed by y^e jury at this coort as other offices which in the s^d towne and cownty incident and belonginge to y^e burgisses onely, accordinge to the custom aforesayd like to be extinguished and utterly lost, wherefore wee desire," etc., etc., that more burgesses may be chosen and made to serve under penalty.

It may, perhaps, be allowed, then, to make the facts fit the legal theory, that the burgesses owed *suit* merely as *resiants*, but that they owed, further, special service as *officials*, or quasi-officials, or *officials in posse*. The same, however, cannot be said of the *freesuitors*.

§4.—The *Freesuitors*.

These certainly owed suit to the court in respect of tenure, and therefore the court to which they owed suit was certainly not a court leet pure and simple. That they owed suit in respect of tenure is made abundantly clear by reference to any of the records for the period 1566-1650, for in these records the grounds of obligation are, as a rule, stated with great exactness.¹ The following, taken from the book which happens to come first to hand, viz., that of 1626, will serve as examples: (1) "Petrus Seale pro uno messuagio sive tenemento in vico vocato Simnell Streete in parochia Sancti Michaelis"; (2) "Heredes Johannis Graunt pro terra nuper Thome Lambert armigeri in parochia Sancte Marie." Such is the evidence of the *freesuitors'* lists. But the evidence of these lists does not stand alone. It is supplemented by the evidence of a presentment of the jury first recorded in the book of 1638

¹ Cf. *Southampton Court Leet Records*, Vol. I., p. xlv.

and copied (or mis-copied) in every subsequent book for about a century and a half:—"Wee present all the freeholders of lands within this towne and county for not causing theire names to bee duly entred into the court booke to the end they may yearlie appeare at this court and doe theire free sute and service to the mayor bayliffs and burgesses of this towne, of whome they hold theire lands in free burgage tenure: and those that have made default of appearance and have not entred their names accordingly we amerce severally at three pence. And for the future we desire that all the free suitors that should appeare here may be compelled to enter their names that they may be duly called at this court. And for the better confirmation and strengthening of this free burgage tenure and for the avoyding of doubts that may arise in tyme to come concerning the same, wee desire that all the said freeholders may be compelled to pay an yearly acknowledge-ment for their lands to the towne according to the law and custome of other courts of this kinde. And for the commoners which were absent at court leete for their names we referr you (to) the beddles rowles and amerce them at 2^d a peice." It appears, then, that the freesuitors were, in the seventeenth century, determinate persons, who held land or tenements from the town on free burgage tenure.

This is not the place to enter into a discussion of the nature of "free burgage tenure." It is enough to say that it differed from other tenures of feudal origin in that lands held under it (1) rendered service by money-payment only, in modern times purely nominal, *e.g.*, a few pence or a peppercorn; (2) were saleable like chattels; and (3) were disposable by will.¹ It is more to the present purpose to note how radically different was the suit-service which bound the free-suitors to attend the Cutthorn court from the suit-real which bound resiants to attend a court leet. First, only inhabitants could be summoned to a court leet; but among the freesuitors were such persons as the Warden of Winchester College. Secondly, no man could be in more than one leet; but the same Warden of Winchester College was a freesutor to the Newbury court (and probably other courts) as well as to the Southampton

¹ See more fully Pollock and Maitland *History of English Law*, I., pp. 295, 298, 640, 645. The fact that they were disposable by will caused the ecclesiastical courts at one time to claim jurisdiction in respect of testaments concerning them. This claim the civil courts repudiated, and, in order to prevent clerical encroachments, it became usual for municipalities to keep a register of the wills of the leading burgage tenants. The Southampton *Black Book* is an excellent example in point. Cf. Pollock and Maitland, *op. cit.*, II., 330-1, and *Hist. MSS. Com. Report*, XI., App. III., pp. 8, 14.

court.¹ Thirdly, suitors to a leet were expected to do suit in proper person; but freesuitors frequently did suit by attorney; e.g., in 1573, against the entry "Prior domus dei ville Suthampton," was written "comp. p^{er} Knaplock attor.," which probably means that the prior of God's House (then, as now, the corporate provost and fellows of Queen's College, Oxford) was represented by a local agent; similarly in 1575, to quote the case of an individual freesuitor, George Paulet, himself not present, was "essoined p^{er} Robert Moor." Fourthly, the obligation of suit to a court leet rested on all young men of the age of twelve and upwards; but, in the case of freesuitors, the expression "infra ætatem" (of constant occurrence) evidently meant, not "under twelve," but "under twenty-one" years of age: thus, 1574, "Heredes Joh^{is} Briget alias vovarte, viz., Joh^{es} Vovarte filius predicti Joh^{is} modo etatis XIX. annor^{um} vel circiter, in custodia Ricⁱ Etn^{er}." Finally, by the *Statute of Marlborough*, nobles, clergy, and women were exempted from attendance at leets; but the very first list of the freesuitors of the Southampton court, viz., that of 1566, begins with the names of Henry, Earl of Arundel, the Prior of God's House, the Warden of Winchester College, and the Presentor of St. Mary's Church; while later on we find the names of Alice Groce (1580 et seq.), Marian Cross, widow (1600 et seq.), Ellinor Hart, widow of Henry Hart (1611 et seq.), and (1620) the heirs of Marian Cross. Taking into consideration these five points together, we cannot, I think, escape the conclusion that the sixteenth and seventeenth century freesuitors of the Cutthorn court were not the suitors of a court leet, but were the suitors of a court which corresponded to the manorial court baron; and this conclusion means that, in the days before the definitions of the lawyers began to prevail, the Cutthorn court was an undifferentiated court fulfilling many and diverse functions, and further, it means that not all the definitions of the lawyers ever succeeded in reducing it to the limits of the ideal court of legal theory.²

When we turn from the question of the grounds of suit to an examination of the evidence furnished by the lists themselves, we find an abundance of interesting suggestion. There is material here (well worthy of being carefully worked) to fill out

¹ Cf. Walter Money *Newbury*, pp. 267.8 and 289. Winchester College held lands and tenements freely at many other places, e.g., London, Portsmouth, Basingstoke, Alton, Alresford, Romsey, Botley.

² This view is supported by a comparison of the Southampton freesuitors with those at Newbury, who, says Mr. Walter Money, owed suit to a court baron in respect to property (*History of Newbury*, p. 262). Again, they obviously resembled the "sectatores curiæ" of Myton, near Hull, who are said to have been "freehold tenants" that "attended the court to perform fealty for their holdings" and to have been "certainly suitors of a court baron" (Travis Cook *Myton*, p. 155).

the family history of Southampton's leading burgesses during a couple of centuries; there is information here which would make possible a more or less complete topographical reconstruction of the Elizabethan and Jacobean town; but it is not for me to turn aside now to deal with family history or local geography. In addition, however, there are many indications of the processes by which the freesuitors gradually lost their distinctive position, and the freesuitors' list degenerated into the mere fossilised relic which it is to-day. It is evident that in the days of Elizabeth and James I. the list was a living reality; the names in it were changed as burgage tenements passed from one holder to another. It is evident, too, that the list was called over (though, apparently, not with unfailing regularity) on the court day, and that those who did not answer to their names were fined. The slackness of the attendance even then, however, quite clearly indicated a declining vitality.¹ The presentment of the jurors of 1638 (quoted above, p. 182) marks another stage of decadence: non-attendance had become habitual. In 1650—the year after that in which was issued the Commonwealth order that records should be kept in English—the statement of the grounds of liability were omitted from the record²: it was, we may assume, too much bother to translate them all. The list became, henceforth, a mere unexplained catalogue of names. Still, for thirty years more it continued to be revised, corrected, called, and marked. In 1680 came the last serious effort to keep it effectively alive. In that year it was called, and of the 78 persons named only 12 responded, and some of these were present rather as jurors and officers than as free-suitors. The 66 persons absent were marked off according to the parishes or wards in which their burgage tenements were situated, and they were duly fined twelve pence each. This attempt, however, to revive the obligations of free burgage tenure obviously failed, for never again, so far as I have seen (though now and again the list was marked), were the absentees called to account. It would appear that the great social and constitutional upheaval of the Commonwealth period had been fatal to this as to so many other late survivals of feudalism. Before the beginning of the eighteenth century so completely had the nature of the obligation of the freesuitors been forgotten, that in the "1638 presentment" (re-entered year by year

¹ For example, in 1616, out of 57 called, 33 were absent, and were accordingly fined 3d. each.

² The very last statement describes, in a choice mixture of three languages, a tenement as situated "in vico vocato le Above Barr streets."

until 1789), the phrase “strengthening of this free burgage tenure” became corrupted by frequent transcription into the bewildering nonsense, “strengthening their *free bargains*.”¹ In the nineteenth century so much more completely had “time, the devourer of all things,” consumed the memory of former realities, that in 1860 the steward gravely informed the jurors (who no doubt had listened in amazement to the then unmeaning catalogue of forgotten names) that the freesuitors are “those persons who are exempt from doing suit and service to the leet,” and that “these once favoured individuals having done good service to the town, the corporation had exempted them and their heirs for ever from suit and service”!² In 1860, indeed, the free-suitors’ list had been for a century, to all intents and purposes, stereotyped. Year after year the same ninety names were, none knew why, copied and recopied, save, first, that occasionally a mistake in transcription was made, which, once made, was continued *in perpetua secula*, and secondly, that in 1824 was added the name of Charles Marett, Esquire, as of one born out of due time. As to Charles Marett, one can only surmise that his name was added under the illusion that a special honour was being conferred upon him, and that he and his heirs were being exempted from suit and service for ever. As to the errors in transcription, no less than twenty-seven of the present ninety-one names have undergone some change small or great. Among the surnames, for example, Sendy has become “Sanby,” Yelding “Galding,” Rowse (?) “Bower,” Lake “Loyte,” Veale “Neale,” Steptoe “Stephens,” Fassett “Fawcett,” Zaynes “Lane,” Abraham Head “William Heard.” Among the Christian names the changes, mainly due to the attraction of some contiguous name, are more radical; for example, Sir Edward Bannister (a notable Elizabeth recusant) became transmuted, so late as 1818, into a visionary Sir Robert, thus merging his identity with his predecessor on the list, Robert Russell, a contemporary brewer, whose beer he had no doubt often drunk in the spacious days of their common sojourn here below. For those readers who are curious to pursue this matter further, I have given in an appendix the present freesuitors’ list—which is a mere meaningless agglomeration of anachronism and error—together with notes indicating how and when it assumed its present form.³

¹ In 1686 it became “free burglas tennor; in 1694 “free bargains tennor.” Later on the word “tennor” was dropped.

² *Hants Advertiser*, May 6th, 1860. Cf. also for similar pronouncements *Hants Independent*, May 9th, 1867, and *Hants Advertiser*, May 7th, 1873.

³ See below, Appendix VII.

§5.—The Freeholders (?).

In the absence of evidence to the contrary, and especially in view of the wording of the "1638 presentment,"¹ one would have assumed that "freeholder" and "freesuitor" were synonymous terms. An entry, however, in the 1573 book seems, *primâ facie*, incompatible with this assumption. It gives "the nams of the fresuitors and freeholders that made defalt at the lawdaye." These names number forty-eight in all, and only fourteen of them appear in the freesuitors' list for the year. As this is the one piece of evidence that seems to require us to recognise a class of freehold suitors distinct from freesuitors (i.e., free burgage tenants) on the one hand, and resiants on the other hand, I give the list in full, printing in italics those names which also appear in the freesuitors' list:—

The Warden of Winchester College

The "Presenter" of St. Marys

Richard Knight, gent.

Edward White, ar.

George Pawlet

John Gregory, alder

Gerard Demaryne, gent.

The heirs of Walter Baker

The heirs of Laurence Groce

The heirs of John Comerland

John Bullicar

John Favor

"The Warde of Hollyrodde."

John Sigwicke

John Hawkins

John Carew

Robert Norman his servant

William Arnold

Andrew Harris

Stephen Alpe, gent.

Edmond Morant

James Jefferis

William Stavely, Alderman

Paule Stavely

Thomas Turner

Walter Key, tayllor

Raynold Howse, alderman

"S^t. Michis & S^t. Johans."

Peter Mathew

Phillipe Cheaverton

Denis Mayoth, servant to Vincent
Raynold

John Thomas, servant to John
Manfild

William Jackson

Ralphe Croutcheman

Martin Flower

Phillippe Demaryne

John Robinson

Elman Lucas

Andrew Bold, servant to Sclyder

Robert Perce

Henry Demock, servant to William
Clarke

William Vobarte, servant to Vayter

George Barton and Richard Grey,
his servant

Hill.

Robert Vaughan

William Medes, *alias* Yedes

John Anthony

East Street.

Nicholas Warde

John Martin

John Lane

Each one of the above-named persons is entered as subject to a fine of 3d. for default. What are we to make of this mysterious collection of names? Are we to suppose that the 35 who are not included among the freesuitors were "freeholders," that is, holders of lands or tenements by some free tenure other than free burgage tenure (*e.g.*, free socage tenure)? The enumeration of six servants in the list seems to render that view incredible, and I am disposed to think that the thirty-five were merely defaulting resiants who for some reason were specially singled out for presentment.¹ If that be so, and if, as has been suggested above, the burgesses are regarded as owing *suit* merely as resiants (though *service* in virtue of their oaths), we are left with the two broad and intelligible classes of suitors, viz., first, the resiants owing suit to the Cutthorn court as a court leet; secondly, the free burgage tenants owing suit to the Cutthorn court as a feudal court corresponding to the manorial court baron.

CHAPTER XXIV.—THE JURORS.

§1.—Their Title and their Numbers.

In the oldest extant books the jurors are designated "the twelve men," and that quite irrespective of their number. Thus, the book for 1550 mentions *seventeen* persons' names under the heading, "The names of the XII. men as ensueth." In the book for the next year there is a list of the same number under a similar title, "The names of the XII. men as foloythe," while the book ends with the appeal: "We the 12 men dess^{re} yowe that the lawedaye buke nextte befor thes w^{ch} ys in the tyme off Mr. Busshepe maye be anyxeyde vnto thes buke & folloyde acordynglye. And thes we dess^{re} God thatt were God wylls maye be mene to redresse thyngs utt off order. Amen." Moreover, on the back of the cover is written:—"The xii^{tho} men booke in the tyme of Mr. Thomas Rygges, mayor, wherein ys manye good orders for the common." The third surviving book, viz., that for 1566, has the same designation in Latin, with, however, the

¹ We know, for example, that Robert Vaughan, of Hill, disputed the jurisdiction of the court over the village of Hill: see 1581, § 77, and the references there given.

interesting difference that the "xii men" are called not *homines* but *juratores*; so that the heading of the list (which contains fifteen names) runs: "Nomina duodecem jur[atorum] pro d[omi]na regina." The next book (1569) has the form, which from that time was the common form, viz., the simple "Jur[atores] pro d[omi]na regina." Does it not seem that just at the period at which the "lawday" was beginning to be called the "court leet," the "twelve men" were getting the title of "jurors"; and can we not see in these changes the influence of legal theory on judicial practice?

The number of the jurors varied from year to year, but it never fell below thirteen. In the days when the court was effective fifteen, sixteen, or seventeen persons—never so many as twenty—were, as a rule, sworn. But from the decadent beginning of the eighteenth century,¹ when attendance grew slack, larger panels were summoned, the principle apparently being that the less there was to do the more there should be to do it; so that it is a fairly valid generalization that throughout the recorded period of the court's history the number of the jurors has varied inversely with the importance of the juror's office. At the present day between thirty and forty gentlemen are commonly invited to enjoy the hospitality of the sheriff.²

§2.—Who were chosen, and by whom?

We have seen how, according to the legal theory of leet jurisdiction, every male adult resident might be called upon to serve on the jury, and how, indeed, in case of necessity even the passing stranger might be impanelled.³ But "the ancient and laudable custom" of Southampton, as stated in the important presentment quoted in the preceding chapter⁴ from the book of 1652, was that burgesses only should be chosen, whenever a sufficient number could be found. More than that, custom required that the burgess who for the year was "high-sheriff of

¹ The first time when over twenty jurors were called was, so far as one can gather from existing books, 1694. That year twenty-one were impanelled, of whom, however, seven were fined for non-appearance.

² The following skeleton table, which states the figures for as nearly as possible quarter-century intervals, will give a sufficiently detailed view of the course of development:—

Year.	No. of Jurors Summoned.	Year.	No. of Jurors Summoned.	Year.	No. of Jurors Summoned.	Year.	No. of Jurors Summoned.
1550	.. 17	1650	.. 16	1750	.. 29	1850	.. 23
1575	.. 13	1675	.. 17	1775	.. 31	1875	.. 25
1600	.. 15	1701	.. 24	1802	.. 51	1900	.. 30
1625	.. 18	1726	.. 28	1818	.. 26	1907	.. 60

³ See above, pp. 71 and 86.

⁴ See above, p. 181.

the town and county" should be foreman of the jury, and that the other burgesses should be taken "descending in order from him." A word as to each of these two points.

(1) The rule that the sheriff should be *ex officio* foreman of the jury can hardly be regarded as having been established in Tudor and Early Stuart days. A glance at the following tables, compiled from the earliest two consecutive series of extant books, will make this clear.¹

SERIES I.

		FOREMAN OF JURY.		SHERIFF.
1573	...	Thomas Dingley	...	John Jackson
1574	...	John Jackson	...	John Ayles
1575	...	John Ayles	...	Hugh Darvall
1576	...	John Ayles	...	Barnard Courtemill
1577	...	John Jackson	...	John Favor
1578	...	(Not known)	...	Robert Moore
1579	...	Richard Biston	...	Richard Biston
1580	...	Richard Biston	...	William Barwick
1581	...	William Barwick	...	Richard Goddard
1582	...	William Barwick	...	Peter Janverin

On only one occasion out of a possible nine was the sheriff for the year also foreman of the leet jury for the same year, though there was obviously a close association between the two offices.

SERIES II.

		FOREMAN OF JURY.		SHERIFF.
1599	...	(Not known)	...	John Mayor
1600	...	John Mayor	...	Richard Cornelius
1601	...	Thomas Sherwood	...	John Greene
1602	...	John Green	...	Thomas Sherwood
1603	...	William Nevey	...	William Nevey
1604	...	Robert Chambers	...	Robert Chambers
1605	...	John Cornish	...	John Cornish

This series shows a closer approximation to the rule of 1652 than does the former: on three occasions out of six the sheriff is foreman. Let us take a third series, this time going to the period of the Commonwealth, *i.e.*, to the period when the rule was formally enunciated. The books of 1651, 1653, and 1657 have disappeared; but the remainder reveal an unbroken uniformity of observance.

¹ The list of sheriffs is given in Davies *Hist. Southampton*, pp. 174-181.

SERIES III.

FOREMAN OF JURY.			SHERIFF.	
1650	...	Nicholas Caplin	...	Nicholas Capelin
1651	...	(Not known)	...	William Higgins
1652	...	James Clungeon	...	James Clungeon
1653	...	(Not known)	...	Henry Ward
1654	...	Edward Marsh	...	Edward Marsh
1655	...	Edward Downer	...	Edward Downer
1656	...	Charles Smith	...	Charles Smith
1657	...	(Not known)	...	Nicholas Clement
1658	...	William Pinhorne	...	William Pinhorne

(2) As to the other point, viz., that the other jurors should be burgesses "descending in order" from the sheriff, the following table suggests that the phrase "descending in order" is not without significance. I take the jurors' list for any year—that for 1600 happens to lie nearest to hand—and I compare it with the lists of successive sheriffs and mayors as given in Mr. Davies's *History of Southampton*. The following is the result:—

JURORS, 1600.	SHERIFFS, 1598-1606.	MAYORS, 1600-8.
John Mayor	1598-9 : John Mayor	1600-1 : John Mayor
John Green	1599-1600: Richard Cornelius	1601-2 : Richard Cornelius
Thomas Sherwood	1600-1 : John Green	1602-3 : Edmund Aspden
William Nevey	1601-2 : Thomas Sherwood	1603-4 : Thomas Sherwood
James Reading	1602-3 : William Nevy	1604-5 : William Nevey
Edward Barlow	1603-4 : Robert Chambers	1605-6 : Robert Chambers
John Cornish	1604-5 : John Cornish	1606-7 : John Cornish
William Lynch	1605-6 : Edward Barlow	1607-8 : Edward Barlow
John Long	1606-7 : John Long	1608-9 : John Longe
(and six others).		

It will be seen that anyone, with the 1600 jurors' list in his hand, would have been able to predict, with an extraordinary degree of accuracy, who (death and accident apart) would be sheriff and who mayor for each of the seven or eight succeeding years. This cannot be regarded as a mere coincidence. There was in fact a regular and recognised succession of offices beginning with the more lowly and laborious, *e.g.*, those of constables and stewards, and culminating in the more lofty and honourable ones of junior bailiff, senior bailiff, sheriff, and mayor.¹ Hence,

¹ Cf. a presentment in the court leet book of this very year, 1600, § 73 :—"Item we present that whereas there hath benn admitted vnto the fellowship of freemen or burgesses of this towne divers gentlemen and others wch heretofore have never vnderaken nor benn called to be constables, stewards nor bayliffs nor ever borne any charges concerninge the said offices. But at the first to be sheriffs and

with regard to the jurors' list for 1600, we may say with some confidence that John Green was senior bailiff, Thomas Sherwood junior bailiff, and that the next six (if not more) in descending order were on the recognised and successive lower rungs of the official ladder.

If it be true, then, that more than half of the jurors, according to "the ancient and laudable order of the town," held their positions on the panel *ex officio*, the question Who chose the jurors? almost answers itself. The mayor and burgesses who, in annual assembly, chose sheriff, bailiffs, constables, stewards, etc., in the mere act of choosing these officials also appointed the major portion of the leet jury. That they otherwise had and kept full control of the panel is suggested by the following entry in the *Assembly Book*, under date April 21st, 1643: "It is this day ordered and agreed that in respect M^r John Benger beinge high sherieff and so by the antient custome of this towne to serve as foreman this yere in the leete jury, and the s^d M^r Benger beinge now absent and not likly to retorne home before Tuesday next to p^rforme the s^d service when the s^d leete is to be held, that M^r John Tayler an ancient burgesse of this towne shalbe and serve as foreman this yeare in the said leet jury and shall henceforward bee exempted from the said service and from the grande jury at sessions and all other pettie juryes." An entry of an earlier date (April 25th, 1623), in the same volume, states the general fact of control equally clearly. It reads: "The jurye for the leete at the same tyme exhibited unto the assembly at the audit house and considered of by them."

In the absence of further positive evidence, and in view of present day practice, one may venture tentatively to suggest that the steward of the court (*i.e.* as a rule the town clerk) drew up the panel, placing first the officials in descending order, and then filling up with other burgesses, and that he next handed his proposed panel to the sheriff, who made such modifications as he thought fit, and that finally the sheriff laid the revised list *pro forma* before the assembly for confirmation.

see mayors we have thought good to comend vnto yor grave considerations our publique dislike of the same not thynckinge it to be fitt so to continew, and doe therefore humbly pray and desier yor wor to take dew care and consideration thereof, and that the burthen of suche chargeable and troublesome offices may not be altogether imposed vppon our poore townesmen & suche others overslipp the same wch we thincke to be contrary to the auintent and lawdable orders of this towne and privilege to the corporation graunted." For the long catalogue of municipal offices in Southampton see Davies' *Southampton*, pp. 211-218, and also *Municipal Corporations Report*, 1835: Appendix Part II., p. 873.

§3.—Penalty of refusal or neglect.

Heavy fines were levied on jurors who refused to take the oath or who, having taken the oath, failed to attend the sitting and perform their duties. Thus 1596 (§ 90): "Item we p^resent Augustin Raynoldes for that he beinge one of the jurie sworne at the court and therefore to attende, nether seeminge to regardinge the penaltie of the breach of his oathe taken nor the execution of the service, did not onely absent himselfe duringe all the tyme of our settinge and never came to us but also in contemptuous manner as seemed walked vpp and downe the streats as we were handlinge the buisines wherefore he is amersed in 10/- The w^{ch} we desier may be receaved in anie wise to the example of others hereafter p^resuminge to offend in the like." A still more severe example was made of another recalcitrant juror, Edward Exton,¹ in 1613 (§ 96): "Itm we lickwise present Edward Exton for his absence from the court whoe as we take it, absented himselfe of purpose not havinge anie inst or reasonable cause for the same the w^{ch} we the rather beleve to be true, in that beinge amongst some of vs then alsoe absent, and by M^r. maior and the alldermen there commandm^{en}t called to the Awdict Howse to take his oathe, he most presumptuouslye and contemptuouslye refused to take the same beinge twyce or thrice there tendered vnto him; ffor the w^{ch} his absence refusall and contempt, we amerce him in £3/6/8. Knowinge ourselves & manie others our comburgesses hertofore accordinge to the auntient custome of this towne have taken the oathe in the like nature not daringe for feare of a fyne to be imposed vppon vs, besids the disgraduatinge of our burgessipps to refuse the same." A note in the margin adds:—"he paide this £3/6/8 ev^{er}ie peny in the Awdit Howse at the whole assemblye."

If the sheriff (the customary foreman) or the bailiffs absented themselves without excuse, they naturally incurred more exemplary fines than ordinary burgesses. Thus 1617 (§ 91), Mr. Richard Dalbye, the sheriff for the year, was fined £3 for non-appearance. Next year, for his sins, he was expressly nominated again to act as foreman. Again he, "wthout anye leave," stopped away, and this time a £5 fine was imposed upon him, lest his "evell example" should be "the ov^{er}throwe of all good

¹ Edward Exton was mayor 1623 and 1636, and also (together with George Gollop) M.P. for the borough in the Long Parliament, 1642.

government and orders" of the town (1618, § 101). Yet once more, in 1619, he was re-appointed, and on this occasion—we may imagine with what feelings—he served (1620, § 79).¹

§4.—Length of "Sitting."

In the majority of courts leet the term of service of the jurors expired with the day on which the court was held: the general rule that passing strangers could be stopped and forced to serve obviously could apply only to cases in which the duties of the jurors ceased when the sun went down. The Southampton jurors, however, did not escape so easily: their "sitting," as they called it, was a protracted affair; the egg of justice, laid at Cutthorn, took some time to hatch. It would appear that on the lawday itself their duties were mainly formal, perambulatory, and festive; that they took the oath, that they listened to the calling of the rolls and received complaints of grievances from the commonalty, that they joined the mayor and his brethren in beating the bounds, and that they feasted at the expense of the sheriff.² Their serious and really onerous duties began after the close of the lawday. During the following weeks they had to go round the town examining all the weights and measures, inspecting all nuisances, viewing all suspected encroachments, looking to the condition of all walls, gates, roads, and ditches, enquiring into the cases of all doubtfully-reputable persons and unlawful practices, and so forth. Thus—to give a few entries in order of date—1579 (§ 82), "We p^resent that during this sitting we found div^{er}s artificers at bowles at Nicolas Boreys orcherd contrarie to the statute"; 1580 (§ 84), "One day in the tyme of o^r sytting walking to the orchard we found playing ther these [eight mentioned] p^rsons"; 1582 (§ 105), "We present by a true and c^retayne reporte mad unto us at this o^r sitting, the 28th day of this moneth of may ther was greate playe at dyce at the king's orchard"—the lawday had been April 8th.³ At the conclusion of their labours they met

¹ The following entries relating to this matter of service on the jury are to be found in the *Assembly Book* for 1651: Aug. 22nd, "This day it was agreed by this house that 10/- of Mr. Charles Smyths fine should be payd unto Mr. Williyam Hopgood for his paynes and attendance in servinge in the jury at Cut Thorne. In the rooms of Mr. Smyth, and 10/- more of the same fine is allowed to the sargeants for theire paynes in takinge the distresse for the sayd fine." Sept. 12th, "This day ten shillings more was ordered to be added unto the ten shillings wch were formerly ordered to be payd unto Mr. William Hopgood out of Mr. Charles Smithes fine for his paynes & attendance in the leets jury the last year and the said 20/- were payd him here in this house accordingly."

² The book of 1589 closes with the following entry: "Item yt ys ordaynd that the forman of every grand jury on ye lawday shal bestow according to ye custom of ye towne a dinner or a supper uppon ye reste of the grand jury."

³ For other interesting examples see 1569, § 13; 1576, § 69; 1577, § 100; 1580, § 69; 1581, § 81; 1589, § 2; 1589, § 81; 1590, § 16; 1596, § 90; 1601, § 44; 1601, § 92; 1615, § 110.

together, entered all their presentments in the court leet book—called in the earlier years variously “the XII. men’s book,” “Cutthorne book,” and “the lawday book”—attached their signatures or marks to their findings, and finally handed over the book to the assembly, *i.e.*, to the corporate mayor, aldermen, and burgesses, who ruled the town and were lords of the leet.¹

How long, as a rule, did the “sitting” last? We are not left without evidence. On the front cover of the 1580 book is a note to this effect: “The rolls to be made o’ before Whittsondie and brout to M^r Maior to the Awdett Howse.” As that year the lawday was April 26th, and Whitsunday, May 22nd, the length of the sitting was less than four weeks. In 1623 the lawday was May 6th; in the *Assembly Book* for that year, under date July 11th, occurs the entry: “This day the p^resentment of the jurye at the leete was read and order given for making out the estreats.” On this occasion, then, the sitting was of nearly ten weeks duration. In the late seventeenth and early eighteenth centuries, as the jurors grew slack and apathetic, the sittings tended to be proportionately more and more prolonged. Thus 1701, the lawday having been May 13th, it was not until August 22nd that a note was added to the presentments: “This day M^r Sheriff appeared with the court leet jurie and delivered up their book.”²

Did the rights and duties of the jury end when the jurors had completed their book of presentments and formally delivered it to the assembly? One would gather from the general absence of any evidence of subsequent activity that, as a rule, they did. Moreover, the following entry, placed immediately after the signatures of the jurors in the book of 1581, seems, by expressly stating an exception, to confirm the conclusion that commonly the jury was discharged from the day of the delivery of their book: “The jurye foresaid are adiorned and to remayne in office untill mychaellmas next and not before that tyme to be dischargd.” The jurors of 1611, however, did not

1 That during the period of the “sitting” the jurors enjoyed some refreshment at the town’s expense is indicated by the following undated note, on a slip of paper among the borough documents, in writing of the late Tudor or Early Stuart period:—

“ Imprimis, Mr. Dales Bill as per the particulers for the first dyner	£4. 12. 0
Dennis Edwards for one meale as per the particcknclers	£1. 6. 4
John Klinge for 2 dyners	£4. 19. 8
Laid out by Mr. forman for wyne at tymes	£0. 6. 2

The comments are pungent:—

“ Say yf ther was at the first diner 30 persons wch was to many to charge ye town, it is 3/1 a peece, a very unreasonable charge.” And

“ The towne dothe always allowe to the jurrey but 3 mealles and this acompt is for 4 meales.”

2 From this time onward, very commonly the date of the delivery of the book is given at the end.

take this view of the case. They held that they were “sworne for the whole yeare,” and, accordingly, on April 6th, 1612—more than eleven months after their appointment, and presumably about nine months after the delivery of their book—they (or rather 14 out of the 16) signed a supplementary paper of presentments, which is now pinned into the original book. It runs: “The sixth daye of Aprill, 1612. Anno Regis Jacobi Angliæ etc. decimo. We William marrinell foreman & the resedew of the jurie of the court leet and lawdaye whose names are subscribed, sworne & impannelled at his ma^{ty}s said court leet holden at the Cuttedthorne for the libertie of the towne of Southampton in the time of William Wallop esquire maior in the nynth yeare of his ma^{ty}s raigue havinge the daye and yeare first above written at theintreatie of some of theinhabitants of the towne taken view of certaine annoyauncs betwene neighbour and neighbour & taken order for amendm^{ent} thereof. And beinge the jurie sworne for the whole yeare accordinge to the auntient custome of this towne time out of memorie accustomed & approoved, havinge taken view of the wynn measures in the severall inns and tavernes of the same towne, doe p^{re}sent the defalts severall as are vnd^{er}written.’ However, the jury’s claim to exercise jurisdiction after the close of their formal “sitting” evidently did not commend itself to one of their victims, William Horne, of the Dolphin Inn and the New Tavern; for he shut them out of the Dolphin when they went to view his measures, and when they made an unexpected visit to the New Tavern and succeeded in laying inquisitorial hands upon his pots, he “most uncivellye, disorderlye, and contemptuouslye tooke the potts” from them, and “reviled M^r. Foreman” insomuch as they were “enforced to gett the potts againn by force,” which abuse they considered to be “soe inordinatt and as was never herd of before,” that they handed the offender over for punishment to the assembly. The assembly, however, for some reason—probably because they did not wish either, on the one hand, to fail to support the jury, or, on the other, to admit their claim to post-sessional powers—took the unusual course of passing him on to the sessions of the peace. But the justices in session, it would appear, had an equal disinclination to tackle the real point at issue, viz., whether the jurors, after the completion of their “sitting” and the delivery of their book, retained their rights and duties of visit and search; if they did, William Horne was a violent obstructor of the law, if they did not, William

Home was the victim of an outrageous trespass. They dealt merely—we find from the *Sessions of Peace Book*, under date April 23rd, 1612—with “William Home inholder for selling wine and ale in unsealed measures,” thus treating the jury as mere informers and ignoring the brawl; and even this neutral issue was undecided; the defendant was only “bound in £20 to present his travers at the next sessions.” Again, at the next sessions (Oct. 5th, 1612) no penalty was inflicted, and the issue was obviously shelved when it was “agreed that he shall appear at the Audit House to end the cause”—of which end I have found no record.

The 1611 jurors, however, were evidently put upon their mettle by the opposition to which their 1612 activity gave rise, for so late as June 4th, 1612 (when the new leet jury for 1612 had been sitting for a month), they—or rather the minimum necessary dozen of them—signed another paper containing a re-presentment of an unredressed grievance which they had originally presented in their book.¹ Whether any notice was taken of this palpably ridiculous assumption that the jurors of any given year remained perpetual custodians of the presentments which they had made, does not appear.

To sum up the whole matter, I am inclined to think that in early times, not entirely lost to tradition in 1611, the jurors had held office (as to this present time they do in the Savoy leet) from one court day to the next, but that gradually the practice had become established that they should be discharged as soon as they had delivered to the assembly the book of their presentments—a practice which the 1611 jurors were not able to break, and one which has continued to be observed throughout the whole subsequent history of the court.²

§5.—The Functions of the Jurors.

The functions of the jurors will appear displayed at large in the following chapters, when the presentments come up for examination. In this place it will suffice to say generally that they were of a far more lowly character than was common in courts leet. We have seen how, in legal theory, the power to present and to punish a large number of minor offences was vested

¹ Cf. 1611, § 60, and Note 2, p. 451.

² In the early and mid-nineteenth century the jurors usually assembled seven days after the court day to make their few and formal presentments. Since 1802 they have dispensed with the procedure of signing, and now on the court day itself they do *via voce* whatever they have to do, and, having done it, are discharged.

in the leet jurors, and an examination of the rolls of most courts possessing leet jurisdiction shows us that this two-fold power was very generally exercised. But the very earliest extant rolls of the Southampton court make it clearly evident that, however large and independent may at one time have been the jurisdiction of the ancient moot, by the middle of the sixteenth century it had been reduced to almost complete subjection to the assembly, that is to the governing mayor, aldermen and burgesses—the corporation—the active, vigilant, and jealous lord of the leet. Its effective power of punishment was gone. It continued, it is true, to threaten penalties, and, though in surprisingly few cases, to inflict amercements. But it neither enforced its own penalties, nor levied its own amercements. Both these tasks were taken over to be done or—as seems to have been commonly the case—left undone by the assembly. The jurors merely made presentments; the assembly did the rest. The legal fiction that the steward constituted the court, if it ever secured recognition, was forgotten, and the “twelve men’s,” or leet, books are full of direct petitions and appeals to “your worships,” the assembled lord of the leet. The jurors in recorded times, in short, acted merely as jackals to a lion, or as scouts to an army. They searched around, and in and out, with watchful eye, with listening ear, with inquisitorial nose, and then, their search concluded, they came back and reported. Two relics, however, of former independence and larger powers remained to them. One was the bare right to amerce (although the power to enforce amercement had, in practice, passed away); the other was a claim to administer summary redress in certain cases. The jurors sometimes of their own mere motion destroyed on the spot defective measures which they discovered;¹ sometimes they forcibly removed encroachments on the public ways.² But these relics of older powers only served to emphasise the later impotence.³

1 Cf. 1611, Note 1 (p. 450): “All wch false measures we have now defaced and returned the mettall to the offenders.”

2 Cf. 1575, § 71, where the jurors say that they have “pullid downe a hedge and dytche set wth quicksette and wythes” which had “moost unjustly Inerochid upon the comon of this towne.” As late as 1845 the sheriff had to advise the jurors “not to pull down gates or fences, but to leave the removal of these Impediments and the proceedings necessary for the establishment of the public rights to the town council” (*Hants Advertiser*, April 19th, 1848). In 1848 the jurors actually pulled up some encroaching boundary posts in Vincent’s Walk (*Hants Advertiser*, May 20th, 1848. Cf. also ditto May 6th, 1849). In 1861 they viewed an encroachment near the gasworks, and some advocated summary demolition, but finally a mere presentment was made (*Hants Advertiser*, April 27th, 1861).

3 On one occasion at least (1613, § 108), when they discovered some “loaves of no assize” whose maker and vendor proved to be “verie obstinat and perverse both in his words and behaviour,” they “tooke awaye from him of the same bread three loaves wch was presently distributed to the poore.” But this act of violence cannot be defended by any appeal to the principle of specific redress, as can the others; and it must be considered always to have been *ultra vires*.

CHAPTER XXV.—THE PRESENTMENTS.

(I.) THEIR NATURE.

§1.—Introductory.

From our inquest into the constitution and powers of the leet jury of Southampton, the dominant fact which has emerged is that even at the beginning of the recorded era the jury was not an independent body exercising original powers, but was almost completely subservient to the municipal assembly, which controlled the panel, which received the book of presentments, which decided whether a presentment should be enforced or not, which retained all executive authority. The presentments, therefore, of the "twelve men" of Southampton were not, like the presentments of the leet jurors of legal theory, "as Evangelist," immutable for ever, from the day on which they were made; they were merely "as Lamentations," that is, utterances of woe, containing no sure prophecy of redress. This fact is driven home with decisive emphasis by a detailed examination of the presentments of the period 1550-1624 (some 3200 in number) which are printed in the first volume of the published records. It would be difficult to invent, or even to conceive, a body of entries less like the model presentments of the court keepers' guides. It will be remembered that in the legal theory of the time the court leet was a purely judicial institution, deriving its authority by prescription or by charter directly from the king, and having power, on the one hand, to enquire into great offences and present the offenders to the king's justices, and, on the other hand, to investigate minor grievances and punish those through whom they had arisen. Thus in respect of the great offences the typical presentment was a bill of indictment transmissible to the justices of the peace, while in respect of the minor grievances it was a verdict, having some such form as "The jurors of our lord the king present that A.B. did so-and-so within the jurisdiction of this court, therefore he is amerced at so much."¹

§2.—The Presentments of 1550.

Now, an analysis of the earliest extant book of the Southampton court reveals the astonishing fact that there is not among its eighty-seven entries *a single one* which can be looked upon as

¹ Cf. Kitchin's model presentments (*Jurisdiction*, pp. 99-107): e.g., "Item presentant quod J. S. fecit affralam infra jurisdictionem hujus curiæ et traxit sanguinem; ideo ipse in misericordia 3/4."

conforming exactly to the court leet type. The two which approach nearest are the following: the first, § 38, "Item yt ys p^{re}sented that Will^m Feverell puttith his cattall upon the towne dichis contrary to the olde custume, ideo ipse (in) m^{la} 4^d; wherfore be yt comanded to hym and all other," etc.; the second, § 78, "Item we p^{re}sent that Thomas Wekes and Willm Denotery hathe not cast downe their hedges & diches in est magdalyn fyld & west magdalyn felde as theye had comaundement the last lawdaye wherfore they have lost their paynes, and therfore yt ys comanded vnto theym that theye do caste downe their diches & hedgis in the said felde by mychelmas comynge vpon payne of 40/-." But though these two presentments approximate to the court leet model, it will be noted that they, and especially the first, deal with matters more appropriate to a court baron than a court leet, and, further, that to each is appended an administrative order. The remaining eighty-five entries reveal extraordinarily wide and varied divergences from the ideal standard of the lawyers. They may be classified under the following heads:—

I.—REFERENCES AND REQUESTS TO THE MAYOR AND HIS BRETHREN.

(1) *General Petitions*, such as § 36: "Item we p^{re}sent that ordre was takyn that ev^{er}y master that should take any prentys should entre their indentures wthin 12 monethes orelles their s^{er}vints to clayme no fredome by their indentures, we desire therfore the said ordennces maye be put in execucon accordingly."¹

(2) *Particular Petitions (based on a specific presentment)*, such as § 31: "Item we p^{re}sent that the tente (tenement) of Mr. Bakere in Sayncte Mychaells p^{ar}ishe by Bulhall, the tente that John Rocheford dwellith in, wth div^{er}s other houssys lately buylded to far^e into the streate vpon the townes grounde not onely to the disordre of the vnyforme of the streats but also to the great anoyance of the next neighbours w^{ch} have shopes by r^{ea}son that the sight of their shopes are drowned & hid by the same, wherfore yt maye please you Mr. Maior & aldermen to sett suche ordre herein that hit be no more done so vpon suche payne as by y^r discrecion shalbe thought mete."²

(3) *Mere Presentments* (action being left to the mayor, etc.), such as § 44: "Item we p^{re}sent that the butts be not made

¹ Cf. also §§ 34, 37, 82.

² Cf. also §§ 80, 83, 84.

accordinge as yt was comanded savinge the butts of Saynt Lawrens p^aishe, wherfore theye have lost theire paynes, and yt ys comaunded that the butts be made on thisside mychaelmes next vpon suche payne as Mr. maior and his bretherin shall asses." ¹

II.—ADMINISTRATIVE ORDERS.

(1) *General Commands*, such as § 10: "Item that none suffer theire kyne to be or to stonde in the streate by night nor by day to be mylked in the strett vpon payne of ev^ery such difalte, p^rovided that the kyne to have a resonable tyme to come & go to be milked & from milkinge." ²

(2) *Particular Commands (based on a specific presentment)*, such as § 22: "Item yt ys p^resentid that Edward Willmot suffereth his dicbes in Goswell Lane to be unscowred by reason wherof the weye betwene Hyll and Hampton is infoundeder wherfore be yt comanded to hym that he scower his diche and mend the weye by y^e last daye of August vpon payne of 20/-." ³

(3) *Particular Commands (not formally based on a presentment)*, such as § 21: "Item be yt comaunded to the comen baker that he at ev^ery tyme he shall bake hereaft^r that ys to saye 3 tymes aweke, send first his boye abowte accordinge to the olde custume vpon payne of every such defaulte 12d." ⁴

III.—MISCELLANEOUS.

(1) *A Note of Agreement*, viz., § 12: "Nota that it is agreed betwene the said 4 men wth the condicent of the 12 of thone p^artie, and Thomas Fuller of thother partie," etc., etc., concerning cattle on the common.

(2) *A Memorandum of a Deposition*, viz., § 25: "Thomas Rydge, of the towne of Suthampton, alderman, sworne and examyned deposeth & saith, that he beinge in his last meraltie of the said towne did demyse and graunt to Mychaell Fourthe the tenement which he dwellith in w^t thapp^rtenncs for 30 yeres then next followinge, payinge yerely 16/8 and he to repaire, whervpon Thomas Casberd then beinge steward did receyve the gods penny. Item he deposeth th^{at} the lease let by parolls by the maire was ev^er allowed and so ev^er accepted before as ev^er he hard."

¹ Cf. also §§ 46-50 concerning unlawful games.

² Cf. also §§ 1, 7, 8, 9, 13-17, 18, 26, 27, 33, 39-41, 43, 44, 52-55, 58, 60, 63, 65, 66, 70-73.

³ Cf. also §§ 2-5, 6, 19, 20, 23, 24, 28, 30, 32, 35, 42, 51, 56, 67, 61, 62, 68, 74, 76.

⁴ Cf. also §§ 11, 29, 59, 64, 67, 69, 75, 77, 81, 86, 87.

(3) *An incoherent expression of anger and disgust*, which successfully defies both logical classification and grammatical analysis, viz., § 79: "provided alwayes that yf Mr. Maior & his bretherin do not redresse the ordre for pyggs as ys afore p^resented and payned, that then we thincke yt mete that ev^ery man bothe before streate & in theire back sides to thaugmentacon of this habomynable accustomed vse of the same to kepe piggs at theire pleasure, so that when the thinge is at the worste shame may redrese yt for poore villagis in the contrey do abhore suche ordre, and therin the people greved avoche Suthampton for theire aucthorytie."

A comparison of these entries with the model entries given by Kitchin and other guide-writers cannot, I think, fail to suggest, first, that the Southampton "lawday" of 1550 was a court among whose functions those which came under the head of leet jurisdiction were of quite insignificant importance; secondly, that the "twelve men" of Southampton had extremely little in common with the leet jurors of legal theory; thirdly, that their duties were more administrative than judicial, and more inquisitorial than administrative; and, fourthly, that to the scope of their enquiries and presentments there were no limits, but that they looked upon it as their work to safeguard, unchecked by any restrictive lawyer-made definitions, all the multifarious interests of the town.

§3.—The Presentments of 1624.

If we turn from the first book of the extant series to the last book which up to the present has been put into print, viz., that of 1624,¹ we shall find evidence of a notable development. It will become clear that during the three-quarters of a century, 1550—1624, the court had grown appreciably more like the model of the legal guides. The name "lawday" was being supplanted by the name "court leet."² In the title, to the old formula "*curia legalis domini regis*" had been added (since 1600) the phrase "*sive (or 'et') visus franci plegii*." The "twelve men" had become "jurors." The presentments had begun to include a large number of items (in 1624 no less than thirty out of seventy-one) which, both in form and in substance, were consistent with the leet ideal. It cannot be doubted, I think, that during the Elizabethan period some new and power-

¹ *Southampton Court Leet Records*, Vol. I., p. 593 (1907).

² First found 1696, § 84. Cf. 1624, § 88, "*The courte of leete and lawdale*."

ful influences had been at work moulding the old institution of the Cutthorn court into a new shape, changing its name, modifying its nature, enlarging its scope, struggling—with considerable though incomplete success—to bring it into conformity with a type. What were those influences? They were, I venture to suggest, first, the court keepers' guides, and especially the treatise of the methodically learned John Kitchin; and secondly, statute law. As to the first, can it, to take a striking example, be a mere coincidence that, on the one hand, Kitchin, in 1579, beginning his model "Entry of Court Leet," wrote "*Visus franci plegii, In primis juratores prædicti dicunt super eorum sacramentum*"—what treasons and felonies have been committed within the leet; and that, on the other hand, shortly afterwards, among the Southampton records the very book (that of 1600) which shows the introduction into the title of "*sive visus franci plegii*" should begin with the till-then-unheard-of presentment, that "*touchinge all treasons, murders, or felonies*" the jurors find all well?¹ As to the second influence, viz., that of statute law, the fact that to the Cutthorn court was assigned the task of helping to enforce "such enactments as came within the sphere of leet jurisdiction," is evident from entries in every extant book. Even in the 1550 book, the twelve men named, though no more than named, those guilty of unlawful gaming "agaynst the king's statute." In later years the entries became more numerous, and penalties were generally indicated: thus, according to the 1624 book, thirty-one persons were fined from 2d. to 6d. for having false weights and measures (§ 60); nine persons were adjudged liable to ameracements of from 2/- to 5/- for selling beer in pots or jugs unsealed (§ 61); while twelve butchers were mulcted 6d. or 1/- each for killing calves under five weeks old (§ 64). As the enforcing of specific statutes became, as it did during the Tudor period, an increasingly large and important portion of leet jurisdiction, so, apparently, did leet jurisdiction become, during the same period, an increasingly large and important part of the duty of the Cutthorn court, until at last it became dominant, and in consequence, as we have seen, the ancient court lost its old, large title of "the lawday," and acquired the specialised and never-accurately-descriptive title of "the court leet."

¹ This formal report concerning treasons and felonies was continued every year till 1625, after which date it was quietly dropped. The entry in 1605, § 1, is a specially close parallel to that of Kitchin: it runs—"Imprimis juratores prædicti presentant. That to there knowledges there are no pettie treasons comitted within there charge."

It is perhaps unnecessary to give an analysis of the 1624 book as detailed as that of the 1550 book. The following summary statement will serve as a basis of comparison, and will indicate both how much more nearly the later book approximates to the model court-roll of the lawyers than did the earlier one, and also, at the same time and on the other side, how very far, even in 1624, the Southampton court remained—as indeed throughout its career it continued to remain—from being or becoming a mere court leet, as a court leet was defined and described in the guides.

1ST.—NORMAL COURT LEET PRESENTMENTS.

<i>I. Serious Offences, transmitted to the justices</i>	...	0
<i>II. Minor Offences, punished by amercement¹</i>	... ..	30

2ND.—OTHER PRESENTMENTS.

<i>I. References and Requests to the Mayor and his Brethren—</i>		
(1) <i>General Petitions</i>	... ..	2
(2) <i>Particular Petitions and Presentments</i>	... ..	22
<i>II. Administrative Orders—</i>		
(1) <i>General Orders</i>	... ..	1
(2) <i>Particular Commands</i>	... ..	12
<i>III. Miscellaneous—</i>		
(1) <i>Reports²</i>	... ..	2
(2) <i>Memoranda concerning ancient customs³</i>	... ..	2
		—
	Total	71
		—

§4.—Conclusion.

An examination of other books, both of this period and later, reveals the fact that at no time did the Southampton court approach nearer than this to the standard of leet jurisdiction. The presentments made in it were always more commonly of the nature of petitions, reports, reminders, informations, protests, lamentations, and regrets, than of the nature of judicial verdicts; and even when they took the proper leet form of judicial verdicts, they still, as such, remained inoperative in a very un-leet-like way; for they had, with the rest, to be laid

¹ Twenty-two of these are coupled with an order *sub poena*; e.g., § 71: "Itm wee pte Thomas Hayewarde for lasege of his furzes verle daungerousle in his howse havelnge noe other place to laie them therein his people passinge to & fro wth a candle wch daunger male ensue to fter all the towne." Amerced 3/4. The furzes are to be removed by Midsummer next on pain of 20/-.

² All well in respect of divine service, treason, and felony.

³ Concerning the making of fences and the holding of the admiralty courts.

before the assembly, to be considered of by the mayor and his brethren, to be confirmed by them, and, if confirmed, to be enforced by their authority. The following long entry (1605, § 88), is eloquent of impotence: "Item wee p^resent that whereas heretofore there hath by manye good p^resentm^{ents} made & orders sett downe & establyshed wth good advise & deliberate consideracon by the jurors of the court leet of this towne then ellected & sworn, tendinge as well to the publicke good of the whole estate thereof as of manye the p^articular members inhabitants therein, and as wee hope no wayes inpuignant either to the statuts of this realme or the lawdable orders of this towne, w^{ch} p^resentm^{ents} are in our former bookes & were by the magistraits of this place p^romised to be effected & put in execucon; (we) doe hereby eftsonns p^resent vnto you that wee fynd not anye of thos p^resentm^{ents} anye wayes effected, neither anye of the said defaults reformed, by whose neglect wee knowe not, w^{ch} is not onlye a great discontentm^{ent} but a far more greater discouragm^{ent} vnto vs all in gen^erall from our hereafter indevours in thes servics, neither shall wee have anye affeccion or desier to expose our labors hereafter in the same yf this yere wee fynd not reformacon as to right equitie & justice app^erteyneth, referringe the same to your grave consideracons beinge the princepall gov^ernors of this corporacon, some of w^{ch} default wee have incerted in this m^argent." The margin mentions (1) undertenants, (2) cleansing the town, (3) avoiding of hogs, (4) suppressing of victuallers and hucksters, (5) paving the streets, (6) repairing the town houses.

Countless other entries confirm the impression conveyed by this important presentment, viz., that the "twelve men" of the Southampton "lawday" possessed, in recorded times at any rate, very little of that independent judicial authority which belonged to the authentic leet jury. In respect to the commonest leet-presentments, they are revealed, not as acting summarily by amercement, but as referring the matter to the consideration of the mayor and his brethren.¹ For instance, what could be more clearly a case for summary amercement in a court leet than the playing of unlawful games, since it was definitely made such by the statute 33 Hen. VIII., cap 9? Yet we find the twelve men, having presented (1600, § 67) that the artificers continue to play at bowls on God's House green, *not amercing the offenders*, but merely saying "wee do desyr M^r. Mayor and the rest of the justices to take better regard of it, otherwysse

¹ Cf. 1623, § 23: "We amercothem . . . a peece, and desier to have it levied."

wee must be excused yf wee p^{ro}ceed farther as well for the reforming of this as of divers other things p^{re}sented and no redresse by those in whome the aucthorety is to do it." Hardly less notable, as illustrating this point, is the presentment 1596, § 76, concerning the assize of bread, another matter peculiarly associated with leet jurisdiction. It runs: "Item we p^{re}sent the bakers in gen^{er}all inhabitinge w^{ithin} this towne doe not keep there assize in there bread as is given by the justics according to the statute wherof we crave redresse by yo^r wo^r havinge authoritie for the same, hit beinge a thinge tendinge to the damage of the poorer sorte of people in the towne in gen^{er}all." If the twelve men did not, and could not, deal summarily with such offences as the playing of unlawful games and the violation of the assize of bread, it is plain that they were leet jurors only by courtesy.

Similar reference to the mayor and his brethren of cases which an ordinary and proper leet jury would have settled out of hand will be found, as I have already remarked, in countless other entries. Perhaps the following selection of specially notable examples will suffice for illustration: the killing of calves contrary to statute (1579, § 7), encroachment on highway (1579, § 47), the stopping of public paths (1579, § 74; 1594, § 14), the suppression of idle persons (1579, § 81), the making of ditches (1581, § 25; 1596, § 68), the correction of the abuse of hogs and "hoggestyes" (1600, § 74), affray with bloodshed (1603, § 32), inmates (1603, § 59), bakers (1603, § 87). Finally, comparison may be made between the presentment 1624, § 70, concerning the enclosure of the common,¹ and the following extract from the *Assembly Book*, dated June 11th, 1624: "Whereas the jury of the leete and lawday for this towne and countye have heretofore declared and expressed and nowe sett downe their earnest desire for the fenceinge and incloseinge of the comon belonginge to this towne for the good and benefite of the inhabitants of the same, and for that purpose have craved allowance of this howse, it is therefore this day ordered and agreed by the whole consent of the same howse that the said jury shall have free libertye to use all lawfull meanes whatsoever for the incloseinge and fenceinge of the said comon accordinge to their good intent and meaneing without any contradiccon."

In most books the fate which each presentment met at the hands of the assembly is indicated by marginal comments, which are invariably instructive. The one most commonly found is "fiat."

¹ See *Southampton Court Last Records*, Vol. I., p. 604.

CHAPTER XXVI.—THE PRESENTMENTS. (II.) THEIR CONTENT.

§1.—Introductory.

When we turn from our examination of the nature of the presentments to a consideration of their content, we are not the less impressed by their wide divergence from the theoretical standard. They manifest a total neglect of all the lawyer-made distinctions between enquirable and not-enquirable, presentable and not-presentable, public and private, common and particular. Both by inclusion and by exclusion they ignore the bounds and limits set by legal subtlety, and they treat indifferently of all matters of both general interest and personal concern with which the jurors chose to deal. In short, they show that the scope and functions of the Southampton "lawday" had been determined in old days by very different means from those by which, and on very different lines from those on which, the scope and functions of the ideal court leet had been determined; and they show further that, in spite of the restrictive influence of court-keepers' guides and the extensive influence of statute-law, the sphere of the jurisdiction of the Southampton court was never made even approximately to coincide with the symmetrically circumscribed sphere of the legal court leet. No doubt it was just because the "twelve men" had so little independent authority—just because they were so completely subordinate to the mayor and his brethren—that they were allowed so much more latitude than could be accorded to fully-endowed leet jurors. The doings of a royal commission are not watched with so much jealous care as are the doings of an autocratic and irresponsible sovereign; to tell tales is not so formidable a power as to pass untraversable judgments.

It would be a long and toilsome task to classify exhaustively, according to content, the three thousand and more presentments which have been printed in the first volume of the records, and still more so to do the same with the much larger number yet remaining in manuscript. With respect to the printed volume, however, the excellence of the index, prepared by Miss Hamilton, Mr. F. J. Burnett, and Mr. C. N. Webb, renders it unnecessary to attempt the task, and it is hoped that when the residue of the

records are published, they, too, will be provided with a similar invaluable guide. All that I can, or need, do here and now is, first, to place in order of frequency and importance the leading classes of presentments, and secondly, to call attention to a few unusually notable or eccentric entries.¹

§2.—Common Lands.²

The extant records begin with a presentment concerning the Salt Marsh (long in dispute between the burgesses and the prior of God's House) which is of exceptional interest, in that it is preceded by the details of the inquest on which it was based.³ Encroachments on the commons are dealt with,⁴ as also are other abuses, such as the cutting down of trees and bushes,⁵ the digging of turfs,⁶ the taking of clay, which was used by the brewers for the stopping of the bungholes of their casks,⁷ and the depositing of rubbish on the grass.⁸ But much more frequent are the entries relating to the pasturing of cattle on the commons by burgesses and others. Elaborate codes of regulations are given in two books,⁹ and numerous presentments¹⁰ tell of the jurors' efforts to enforce them, and of the commoners' determination to violate them; for example, the regulations say that no person shall pasture more than two beasts on the common, but Lady Dawtreys, in 1569, is said to have had thereon some forty cows and six score sheep.¹¹ The drivers of the common¹² and the cowherd¹³ are carefully supervised. The "farmer" of the disendowed chantry of St. Mary is presented for not performing a duty which he had apparently inherited from his ecclesiastical predecessors, viz., that of providing "a lawfull comyn bull."¹⁴ From 1577 onward, the problem of the enclosure of the common often comes forward for consideration.¹⁵

§3.—Communal Rights and Interests of all kinds.

The twelve men evidently considered it to be part of their duty to search out and report upon all matters, whatever their nature, which they regarded as violating the rights or injuring

¹ The references given below are merely typical, not exhaustive. The index should be consulted by those who wish to get fuller information.

² The largeness of the number of presentments concerning the common lands—see index, s. v. *Commons, Heath, Hoglands, Houndwell, Magdalens, Salt Marsh*—is peculiarly interesting in view of the fact, noted above, pp. 98 and 110, that legal theory and the practice of the supreme courts tended to regard the regulation of the commons as *not* proper to a court leet, but as belonging to the court baron.

³ 1550, § 1.

⁴ 1550, § 77; 1575, §§ 44 and 87.

⁵ 1569, § 69; 1577, § 91.

⁶ 1576, § 64.

⁷ 1568, § 18.

⁸ 1566, § 17.

⁹ 1566, §§ 19-23, and 1581, § 117.

¹⁰ 1575, § 88.

¹¹ 1569, §§ 28 and 29.

¹² 1573, § 68.

¹³ 1580, § 62.

¹⁴ 1550, § 64 and 1589, § 75.

¹⁵ 1577, § 90; 1624, § 70.

the interests of the community. A presentment of 1579 (§ 107) states the general principle clearly: it deals with a specific encroachment, and then adds, "for as o' auncestors of theire greate care & travell have p^{ro}vided that & like other many benefyts for vs theire successors, so we thincke it o' dweties in consience to keepe vpholde & maintaine the same as we found yt for o' posteritie to com w^hout diminishing eny Part^r or p^{ar}cel from yt, but rather to augment more to yt yf yt may be." Prominent among the affairs to which, under this head, they pay attention, are the letting of the town lands;¹ the farming of the petty customs;² the repairing of the corporation tenements;³ the maintenance of the municipal buildings,⁴ together with their decorating,⁵ furnishing,⁶ and cleansing;⁷ the collecting of debts due to the town;⁸ the claiming of treasure trove;⁹ the administration of municipal charities;¹⁰ the holding of the annual fairs;¹¹ the keeping up of the admiralty courts "lest tyme the devourer of all things" shall cause the loss of the jurisdiction altogether;¹² the keeping open of the conduits, which tended to pass into private hands;¹³ and, finally, most prominent of all, the defending from encroachment customary rights of way¹⁴ and the ancient metes and bounds of the borough.¹⁵

§4.—The Privileges of the Burgesses.

If the freedom of the borough on the one hand carried with it valuable commercial and social privileges, on the other hand it entailed the payment of fees, liability to municipal office, and responsibility to the crown for services and monetary dues. Hence the privileges were zealously guarded from those who did not share the burdens, and the twelve men, who, as we have

1 1600, § 6; 1811, § 18.

2 1619, § 107.

3 1573, § 47.

4 1616, § 62.

5 1605, § 65.

6 1613, § 87.

7 1620, § 64: "Itm wee pnte that it is verie conveynent that the towne hall be clenسد of the olde rushes that bathe ther layne manie yerres in soe muche that when ther is anie occasion of an assemblie especiaillie in the summer wth the evill savors therof is caused a glomyme infectious heate that few can suffer the same, besides manie Inconvenyences of fleas & other beastle things (concerning) wch wee desier maie be presentlie order taken. Alsoe the table benches and seates ought to be amended by the joyner or carpenter & the greate table to be new covered wth clothe, the spoyle therof is cheifellie occasioned by the sufferings of straye players to acte their enterludes ther, wch draweth greate concourse of disordered people bothe by daie and nighte, be it therfore ordered that hereafter yff anie suche stage or poppett plaiers must be admittid in this towne that they provide their plaies for their representacions in their innes or elce where they can best provide but ever be debarred for vseinge the like in the towne hall."

8 1569, § 72.

9 1617, § 99.

10 1604, § 69.

11 1596, § 97.

12 1613, § 9.

13 1650, §§ 39-41. Thus 1650, § 41, states that All Saints' conduit is in Mr. Pace's hands, so that "the povertie can have no water but at the pleasure of Tom his fool and his maydens."

14 1581, § 14.

15 1596, § 52.

seen, were normally all of them burgesses, kept a vigilant eye upon encroachments. The presentments include articles dealing with such matters as the sharing of bargains,¹ the maintenance of trade monopolies² to the exclusion both of non-burgesses³ and foreigners,⁴ among whom the men of "the isles of Guarnzey and Jerzey" are spoken of with especial jealousy.⁵ They treat also of the making of burgesses,⁶ insisting upon the requirement of one year's previous residence and upon the customary payments,⁷ and demanding with vehemence and threats that no more "men of the Isles of Jersey and Garnesey" be admitted.⁸ They pay attention also to the matter of apprenticeship, for a seven years' service with a burgess is the common way of qualifying for the freedom of the borough; hence they ask that a register of indentures may be kept,⁹ and that not so many "Jharsse and Garneese prenttys" be taken.¹⁰

§5.—Trade and Industry.

Very closely connected with the presentments concerning the commercial privileges of burgesses are those dealing generally with the regulation of trade and industry. These are so numerous and so various that it is impossible in this place even to catalogue them fully, or indeed to do much more than to say that they supply very rich material for students who wish to examine the economic organisation of society during the transition period between the era of guild regulation and the era of individual freedom. One conclusion they as a whole suggest very emphatically, and that is that in the days before the Southampton merchant guild had become merged and lost to view in the borough—before the guildhall had become the townhall, the guildman the burgess, the alderman of the guild the mayor of the municipality—the twelve men had regarded the enforcement of the guild ordinances as among the most important of their functions.¹¹ The following is an outline sketch of some of the main features of the mercantile presentments of the twelve:—

1 1587, § 83.

5 1569, § 64.

9 1560, § 36.

2 1561, § 40.

6 1602, § 81.

10 1561, § 46.

3 1587, § 84.

7 1605, § 89.

4 1550, § 80.

8 1550, § 82.

¹¹ The oldest extant book, that of 1550, is peculiarly redolent of the merchant guild. It ends with a note of the names of four persons supposed to have copies of the guild ordinances; it contains a complaint that its presentments have been prematurely made known to a person who is "none of the twelve nor of the guild" (1550, § 83): two of its entries (§§ 14 and 52) are exact parallels to two of the guild ordinances (§§ 43 and 42, for which see Davies *Southampton*, pp. 139-161); many others deal with industrial and commercial affairs. Moreover, its "stall and art" lists are eloquent of guild licence and regulation. For the general problem of the relation of guild to borough, see Gross *The Guild Merchant*. The connection of court leet with merchant guild is mentioned by Bishop Stubbs in his *Lectures on Early English History*, p. 314.

Bakers violate the assize both as to ordinary bread¹ and horse-bread,² they fail to provide halfpenny and farthing loaves for the poor,³ they make bread "verie unwholesome for mans boddie of mustie meale."⁴ Moreover, the common baker will not bake at the appointed hour, which is 11 of the clock, and three times a week,⁵ nor will he send round his boy to give due notice,⁶ nor will he be content with the proper charge, which is a penny a bushel.⁷

Brewers charge too much for beer when malt is cheap,⁸ and refuse to brew at all when malt is dear;⁹ the quality of the beer is bad;¹⁰ and as to the barrels, they are not full,¹¹ and they are carried about the town in iron-bound carts, which ruin the paved streets.¹²

The Brickmaker makes bricks too small¹³ and insufficient in quantity;¹⁴ moreover, he injures the common by his digging for clay.

Butchers conspire to enhance prices,¹⁵ sell unwholesome meat, inflate their meat, kill unbaited cattle, keep pestilential slaughter-houses, or slaughter animals in the open street, throw offal about in public places, violate the statute which prohibits the killing of calves under five weeks old.¹⁶

Chandlers make candles of the skimmings of pots,¹⁷ and use inferior wick.¹⁸ Moreover, they "reare and lett fall the prices of them as if there were no feare of justice" before their eyes, so that whereas the charge should be 2d. a pound,¹⁹ they exact as much as 5d.;²⁰ and, further, they do not always give "good language and fayre spech" to customers,²¹ who complain that the price is high and that the "stooffe ys not good as yt ought to be."²²

Cobblers "do vsse to mend & cobble mens shewes wth naughtie slittinge lether w^{ch} is to the greate chardges of the inhabitants of this towne for that yff they did vsse & occupie good & well tanned lether yt wolde be to theire most proffyt & bett^r s^{er}vice."²³

Coopers make barrels too small,²⁴ and send them out unmarked.²⁵

Ferryemen neglect their duties, as, for example, in 1581, when a presentment records that a leet juror "cominge to Itchin

1 1613, § 108.

6 1679, § 89.

9 1680, § 53.

13 1551, § 48.

17 1580, § 26.

21 1580, § 67.

25 1566, § 49.

2 1577, § 93.

6 1550, § 21.

10 1603, § 58.

14 1674, § 15.

18 1571, § 70.

22 1679, § 85.

3 1569, § 12.

7 1579, § 89.

11 1574, § 17.

15 1566, § 38.

19 1587, § 49.

23 1576, § 88.

4 1603, § 87.

8 1575, § 86.

12 1577, § 99.

16 1679, § 7.

20 1600, § 70.

24 1573, § 20.

ferry at 12 of the clocke at night, beeinge very faier weather, found one peeter, one of the comon passengers, vp & requestid dyvers tymes of him to passe ov^{er} offering him 4d. for his labo^r, who refused to passe him ov^{er}, althoughe he wth others weare daunsing till yt was after one of the clocke, for the complaiynaunt staidd theare so longe or he could get ov^{er}, sayeng he had nev^{er} a boat in hand w^{ch} is contrary to the statute."¹

Horse-dealers provide "tierid jades"² which are not "s^{er}vyceable and able to carye a man in his journey";³ moreover, they sometimes refuse to supply horses,⁴ and charge excessive rates.⁵

Hucksters trade without due licence, forestall and engross provisions, break the rule which says that they are not to come to market before 11 o'clock, and otherwise offend.⁶

Innkeepers and Taverners sell without licence, charge improper prices,⁷ keep irregular hours,⁸ use unsealed measures,⁹ and do not always wash their pots.¹⁰

Millers adulterate the meal entrusted to them; as, for example, in 1600, a certain John Martin who "by his owne confession did putt into a sacke of wheat of Mr. Tolderveies carried to the mill to be grounde a pottle or more of the sande of the sea, and grounded it all together wth the wheat to the great hurte and damage of the people that shoulde eat the same and great vnwholesomnes of the bread for mans boddie therwth to be made."¹¹

Porters come in for frequent, lengthy, and vigorous presentment. On the one hand they are protected in a monopoly of the right of the transport of goods within the liberties;¹² on the other hand, they are accused of haunting ale houses,¹³ of playing at cards and backgammon,¹⁴ of neglecting their duties and then demanding payment as though they had performed them,¹⁵ of behaving insolently and making charges that are "unresonabbulle," to the "grett greffe" of the persons "so yowssed."¹⁶ Further, they do not properly perform the office of town-scavengers which is incumbent upon them.¹⁷

1 1581, § 85.

2 1576, § 72.

3 1677, § 81.

4 1576, § 22.

5 1576, § 71.

6 1671, § 71.

7 1651, § 32; 1676, § 86.

8 1680, §§ 54, 65.

9 1689, § 11.

10 1669, § 50: "Item for as much as a certayne mane of Guarnsey drinking in an alle house in this towne by reasons that they doth not vse to washe ther potts was leeke to be powysesoid [poisoned], for voyding the danger therof we request that order maye be taken that no Inkeper, taverner or allehouse keper do sell wyne, beere or alle but that ther potts be wasshid that men that byeth the same maye se the same drawn & the pots washed to avoyd thenconvenances that maye growe thereby."

11 1600, § 71.

12 1669, § 56.

13 1680, § 59.

14 1679, § 84.

15 1581, § 82.

16 1651, § 46.

17 1673, § 20.

Wood and Coal Vendors purchase their supplies from improper sources,¹ and sell their wares in sacks which do not hold full measure.²

Besides these presentments relating to specific occupations, there are many general entries dealing with such matters as engrossing,³ forestalling,⁴ and regratting;⁵ the ordering of the markets;⁶ the use of false weights and measures,⁷ or unsealed measures,⁸ concerning which detailed regulations are made.⁹

The picture which these mercantile entries as a whole impress upon the mind of the student is that of a semi-socialistic community in which every craftsman and every trader is to some extent a public official, working under licence, enjoying monopoly, subject to supervision, regulated by authority in matters of quality, quantity and price of goods, hours of labour, numbers of apprentices and journeymen, and almost every other particular of his occupation. The picture is one which economic students would find it interesting to work up in detail.

§6.—Ancient Customs.

Not only did the jurors make it their business to maintain established commercial and industrial rules, they also concerned themselves jealously to safeguard the observance of other "ancient and laudable customs" of all kinds. Hence there are in the books frequent entries relating to such matters as the sanctity of ancient lights,¹⁰ the local practice of fencing,¹¹ the keeping of the watch,¹² the taking of toll,¹³ the ringing of bells,¹⁴ and even the order of succession to municipal offices.¹⁵

§7.—Roads, Streets, Ditches, Hedges, etc.

After the true manner of leet jurors, the twelve men kept a watchful eye upon the roads, streets, ditches, hedges, bridges, and sea banks of the town, the repair of which, in the sixteenth and seventeenth centuries, fell entirely upon the private persons to whose property they were contiguous.¹⁶ The presentments

¹ 1550, § 69.

² E.g., 1551, § 34; 1566, § 34; 1582, § 68; 1601, § 97.

³ E.g., 1551, § 8; 1581, § 42.

⁷ E.g., 1577, § 77.

⁸ E.g., 1550, § 80.

¹⁰ 1579, § 49.

¹¹ 1580, § 88.

¹³ 1581, § 81.

¹⁴ 1581, § 84; 1604, § 97.

² 1571, § 10.

⁴ E.g., 1550, § 70; 1582, § 59.

⁶ E.g., 1580, § 67; 1601, § 64.

⁹ 1551, § 53, and 1569, § 13.

¹² 1579, § 79.

¹⁵ 1600, § 73.

¹⁶ With respect to the paving of the streets, see statute 17 Ed. IV. (1477), summarised in Davies's *Southampton*, pp. 119-20. This act remained in force till repealed by 10 Geo. III., cap. 25 (1770). Dr. Speed, the Southampton historian, opposed this repeal, saying (in Chapter IX. of his manuscript history) that it was secured "by much sinister management" on the part of some new-comers to the town who had been "seized with the epidemical madness of new paving."

show the streets of the town in general to have been "greatly in decay in divers placis for lack of paving,"¹ and year by year they mention particular portions that specially need repair;² at the same time they complain of the enhanced price of paving stones.³ As to the roads outside the walled town, the entries reveal an even more deplorable condition of decay; for instance, they mention in 1574 (§ 56) a hole in Gosling Lane, made by the "goords of raigne," so great that "divers cattall hath byne leek to be killed by reason therof," yet next year⁴ it has to be presented again in almost identical terms. Overseers are appointed to see that repairs to the roads are carried out.⁵ Ditches, bouneys, and gutters are frequent subjects of presentment;⁶ they need cleansing and re-making, so that the water "may have his course."⁷ Hedges require planting,⁸ bridges maintaining,⁹ docks filling up,¹⁰ sea-banks renewing.¹¹

§8.—Defence of the Town from Foe and Fire.

In days when the seas were infested by pirates, and when the land swarmed with valiant beggars and violent criminals; in days, too, when open hostility with Spaniards, French, or Dutch was the rule rather than the exception, and when domestic party-conflict easily developed into civil war, the problem of local defence was one never absent from the minds of municipal authorities. It was a problem, moreover, the statement and solution of which were the particular duty of leet jurors all over the country. Numerous entries in the Southampton court leet books show the walls in decay,¹² through the growth of "yvy, elders, and other suche weedes,"¹³ or through the deliberate knocking of holes in them,¹⁴ and building of houses against them;¹⁵ they show, too, the gates undefended,¹⁶ and their keys in the hands of parties not "verey suffycent" for their safe custody;¹⁷ the towers, moreover, in ruin through the slackness of the corporations of shoemakers, bakers, and others whose business it has always been to maintain them.¹⁸ As to the watch, it is kept by "poore sillye ould men"¹⁹ who are "weake and unhable" to be of any service,²⁰ and who, further, are often "to seeke,"²¹ since they come late and then "geve over the watch

1 1550, § 58.

2 E.g., 1551, § 28.

3 1569, § 31.

4 1575, § 35.

5 1576, § 64.

6 E.g., 1589, § 26.

7 E.g., 1569, § 20.

8 1550, § 35.

9 1550, §§ 19, 74, 75.

10 1587, §§ 24, 25.

11 1550, § 51.

12 1569, §§ 24, 35.

13 1577, § 43.

14 1550, § 57.

15 1550, § 56.

16 1596, § 59.

17 1600, § 16.

18 1581, §§ 38, 39.

19 1611, § 15.

20 1604, § 101.

21 1571, § 75.

at two or three of the clocke in the morning"¹—an "intollerable abuse" and "publick scandell" to the whole government,² whereof reformation is sought. The watch-bells—which serve "for the more comfort and better assuraunce off thinhabitants of this towne"—are not rung as they should be at the castle,³ the watch-tower,⁴ and Holyrood.⁵ Clubs are not provided by the householders in case "anye affraye shold be made in the streats," when they would be useful "for the pacyffieng there-of";⁶ dogs are allowed to disturb the watch;⁷ "the ordinaunces of brasse and iron" are in great decay.⁸

To guard the town from that other enemy—more terrible than any human foe—fire, orders appear forbidding thatched roofs⁹ and commanding the proper making of chimneys,¹⁰ the keeping in repair of the wells¹¹ and the pumps,¹² together with the provision of leather buckets for water,¹³ and baskets filled with earth.¹⁴

§9.—Nuisances.

Not only serious and exceptional perils, such as invasion, riot, and fire, but also petty, common, ever-recurring nuisances came up year by year for presentment. The following are samples of the kinds of abuses dealt with by the inquisitive twelve men. In the streets of the town, say their records, cows are milked,¹⁵ hogs and ducks are allowed to wander,¹⁶ butchers throw down the offal of their slaughter-houses "to the great anyoyance of the King's people,"¹⁷ and sometimes even kill their sheep, which is an "yelle syghtte" to the inhabitants of the town,¹⁸ carts are left,¹⁹ timber is deposited,²⁰ dirty clothes are washed,²¹ and hung out to dry,²² fishy water from the fishmongers' stalls (which "procures and causes fowle and noysom savers") is poured forth, unmuzzled dogs are left at large,²³ and other "fowle and beastlie

1 1580, § 68.	2 1604, § 101.	3 1574, § 47.	4 1577, § 29.	5 1560, § 67.
6 1590, § 8.	7 1560, § 73.	8 1598, § 60.	9 1589, § 53.	10 1569, § 32.
11 1560, § 66.	12 1573, § 24.	13 1611, § 22.	14 1596, § 95.	15 1550, § 10.
16 1550, §§ 14 and 16.	17 1550, § 52.	18 1551, § 38.	19 1550, § 62.	20 1550, § 63.
21 1550, § 72.	22 1603, § 20.			

23 1587, § 33: "It. we present that (6 named) & others have ther mastyve dogges & byches comonly & dayly going abroad in the streats wthout muscelling or els, wch dogges ar very harmefull in the streats, runnyng vpon horsemen ryding along the streats many tymes endaugnering them wth overthrowing ther horses & spoyling & teryng of every man's dogg that passe by them, a occasion many tymes to sett many men redy to go together by the cares & cause of vnkynndness among neyghbors wth hasard of children wch overthrowing them many tymes in the streats, wherfor every one of them have forfeyt for every tyme so found in the streat vnmusselyd 3/4." One dog in particular comes in for adverse notice (1587, § 34): "Item we present yt at the tyme of or sytting ther hath ben complaynt made of another dogg betwene a masty & a mungrell of Peter Quoyses wch hath stroing qualytes by himselfe, wch goyng lose abrode doth many tymes offend the neyghbors & wyll fetch owt of ther howses whole peces of meate, as loynes of mutton & veale & such lyke & a pasty of venson or a whole pound of candells at a tyme, & will not spoyle yt by the way but cary yt whole to his masters howse, wch being a profyttable dogg for his master, yet because he is offensyffe to many yt is not sufferable wherfor his master hath forfeyt for every tyme 3/4. And be yt comaunded to him to kepe him tyed or to putt him away vpon payne to forfeyte for every tyme he shalbe found in the streets 3/4." The margin calls this sagacious animal "a well qualytyed doge."

enormities" are committed or permitted.¹ In some houses cows and hogs are kept,² or killed;³ and, what is worse, in others "lewed people bothe of men and also women by comon fame of evell name and reporte" are entertained.⁴ In the yards and gardens of many dwellings there is an "habomynable accustomed use . . . to kepe piggs":⁵ even the rulers of the town cannot always resist the malign fascination of swine, for on one occasion it is recorded that "M^r maire kepith a sowe in his backesyde which is brought in and owte contrary to the ordenences of the towne."⁶ In the public places rubbish⁷ and dead animals⁸ are deposited, "which ys veric noysom and like to breede infectyve ayre." The grassy banks of the town ditches are used by the butchers for pasturing cattle,⁹ and by the glovers for drying their skins,¹⁰ while the rails at the top are employed by others for the dangerous purpose of airing the clothes of "sycke and pocky people."¹¹ The quays are encumbered by ancient and useless vessels;¹² the conduits are polluted by the washing of garments;¹³ the inhabitants of the town are deceived by the incorrectness of All Saints' clock,¹⁴ and are offended in their æsthetic sensibilities by the unsightliness of Mr. White's house,¹⁵ and by the hideous spectacle of "a company of old bordes" set up by Mr. John Capelin, in the High Street,¹⁶ and so on, and so on. Hence numerous orders¹⁷ and the request for the appointment of special officials.¹⁸ But all in vain; the town continues to be "verye fylthelye kept."

§10.—Evil Persons.

Those incarnate nuisances called generically "evil persons" are frequently mentioned in presentments. They include vagabonds and beggars,¹⁹ who are to be expelled,²⁰ common drunkards,²¹ inmates and undertenants,²² haunters of taverns and alehouses,²³ immoral persons, whether men²⁴ or women,²⁵ bigamists,²⁶ charwomen,²⁷ witches,²⁸ and the fencer.²⁹

1 1615, § 30.	2 1575, § 83.	3 1574, § 36.	4 1576, § 69.	5 1550, § 79.
6 1560, § 18.	7 1551, § 54.	8 1576, § 70.	9 1550, § 38.	10 1569, § 4.
11 1550, § 24.	12 1551, § 55 and 56.	13 1503, § 20.	14 1576, § 82.	15 1575, § 62.
16 1573, § 21, and 1577, § 48.	17 E.g., 1604, § 76.	18 E.g. 1589, § 97.	19 1569, § 18.	20 1579, § 83.
20 1579, § 81.	21 1604, § 89.	22 1603, § 59.	23 1603, § 84.	
24 1575, § 81.	25 1603, § 71.			

²⁷ 1582, § 87: "Item we present that within this towne ther be sundry mayde servants that take chambars and so lyve by themselves masterlesse and ar callyd by the name of charr women, which we thincke not mete nor sufferable wch we praye yr worships to consider of."

²⁸ 1579, § 109.

²⁹ 1604, § 70. When and why is a fencer offensive? we may ask. The jurors reply: "We present it is verie inconvenient that the fencer shoulde dwell in the towne for that he draweth vnto him bothe menservants and apprentices causinge drunkards and idle persons, besides the breache of his mates [ma]esty's peace, as at the time of our now sittinge we see ill. or v. men sore hurt and wounded, we desier he may be comanded out of the towne."

§11.—Defaulting Officers.

Not far removed from “evil persons” are officers who neglect their duties. The court leet books contain many entries concerning such men. We find, for example, presentments respecting a town clerk, who charges excessive fees;¹ a steward, who allows the town property to fall into disrepair;² a schoolmaster, who shows “a verie greate neglecte in not geveinge due attendance in teachinge the children,” but who leaves them to the care of “a stranger unexamined and unripe of yeres”;³ sergeants, who make private gain out of their control of the market,⁴ who “denie to arrest men when warraunts are offered unto them,”⁵ and who seal weights and measures improperly;⁶ criers, who do not “crye and p^{ro}claim victualls”⁷ or keep the town walls clear of ivy and other weeds,⁸ or clean the quays and sweep the markets,⁹ or perform the “manie other things” appertaining to their office;¹⁰ drivers, who not only fail to drive, but who, when rebuked by the twelve men, display “obstinat and contemptuous behavior” towards them;¹¹ discreets of the market, who do not see that the market is well served;¹² beadles, whose rolls are not duly forthcoming,¹³ and so on. The difficulty is for us to know where to stop, that is to say, to know whom to regard as officers and whom not. As has already been remarked, every craftsman and every trader, especially when a member of a regulated and protected confraternity, was to some extent a public official. In the Southampton records such persons as the porters and the “tipplers” stand out clearly in a public character. But what of the parsons? Was it as defaulting officers that “Mr. Stere, Mr. Husse, and Sir Thomas of S^t. Migels” were presented¹⁴ for using the wrong kind of bread at communion? Was the cure of souls regarded as a mystery of the same order as the currying of hides, and was “waffer or singing breade” corrupt and unlawful raw material analogous to “naughtie slittinge leather”? We cannot say; and that for the simple reason that in this transition period from mediæval regimentation to modern individualism, the distinction between public and private could not be accurately drawn. The movement from status to contract was incomplete; the individual had not yet emerged, but was yet in *gremio communitatis*. Hence under this head of “defaulting

1 1823, § 40.

2 1611, § 43.

3 1620, § 84.

4 1587, § 44.

5 1605, § 91.

6 1605, § 46.

7 1579, § 81.

8 1587, § 47.

9 1600, § 45.

10 1611, § 46.

11 1611, § 78.

12 1596, § 77.

13 1611, § 71.

14 1576, § 77.

officers" might be grouped, without serious overstraining, all those bakers, brewers, etc., whose offences have been noted under the head of "trade and industry."

§12.—Instruments of Justice.

Officers must have instruments of justice for the punishment of offenders, and, as was usual with leet jurors, the twelve men of Southampton gave heed to their maintenance. Their presentments speak of (a) the stocks in various parts of the town for the correction of "vagabonds and iddel persons";¹ (b) the pillory, used for fraudulent bakers, brewers, etc.;² (c) the ducking stool "uppon the diches . . . for the punishement and terroure of harlots, skowldes, and suche malefactors";³ (d) the cucking stool, "made with wheeles or some suche devise to be carried from dore to dore as the scoldes shall inhabitt so that they may receave punishment,"⁴ which would be administered in the shape of voluntary contributions of laughter and jeers and garbage and dirty water by the upright of the neighbourhood; (e) the gallows;⁵ (f) the prisons, which are declared to be inadequate in size,⁶ and "so filthely kept that the noisome stinks thereof are suche and so intolerable as it is very dangerus to breed sume infectious disease bothe emongest the prisoners and also suche others as shall passe by";⁷ (g) the house of correction, or workhouse, "to sett the poore on worcke," as required by the important poor-law of 1601;⁸ (h) the pounds for cattle and for hogs—from which latter, such is its disrepair, "the hoggs creepe out as fast as they are putt in."⁹

§13.—Breaches of Law and By-law.

The instruments of justice were by no means unused in old Southampton. Breaches of law and by-law were frequent. Not many of them, however, were dealt with by the twelve men. For the borough had not only its weekly "town court" for the settlement of civil pleas, but also (under charter 2 Hen. IV.) its bench of justices—consisting of the mayor, four aldermen, and four other burgesses—who in petty and quarter sessions judged minor criminal offences. Hence the

¹ 1571, § 8.

² 1587, § 64.

³ 1579, § 40. Cf. also 1601, § 40, where a marginal note adds: "Somthing to be devised to be kept dry & to be used att ye crane att full sea: ytt rote & is broken standinge abroad: halfe a hogshed will serve as well as any thing."

⁴ 1604, § 24.

⁵ 1613, § 19.

⁶ 1605, § 26.

⁷ 1600, § 56.

⁸ 1616, § 126.

⁹ 1600, § 53.

strictly judicial work of the Southampton jurors was a negligible quantity; when the twelve men took cognisance of an offence committed, they did so merely in order to bring it to the notice of "their worships," the justices, who may be considered to have been the judicial committee of the municipal assembly. It is further to be noted that, in thus drawing "their worships'" attention to breaches of law, the twelve men did not regard themselves as being in the smallest degree restricted by the limits assigned by the theorists to leet jurisdiction. They presented anything and everything. Thus we find in the records entries relating to offences so various as affrays;¹ pound-breach;² neglect of the oath of allegiance;³ failure to attend church (a thing not only "contrary to thorders of the realm,"⁴ but also one by reason of which "the great wrathe of God hangethe over us");⁵ the use of wafer bread at communion;⁶ trading on the sabbath in shops⁷ and fairs;⁸ discontinuance of archery,⁹ which is interfered with by the grazing of cattle¹⁰ and by the "noysom and filthie savor" of Robert Cross's fishy water,¹¹ as well as by the disrepair of the butts;¹² indulgence in unlawful games,¹³ especially on Sundays;¹⁴ shooting with guns;¹⁵ injuring the fry of fish;¹⁶ drunkenness, which is "so comon in this towne as except some spedye reformacon be taken . . . yt will redowne to the great infamy of the publicke government";¹⁷ wearing of illegal apparel;¹⁸ the wrongful taking of apprentices;¹⁹ and, to close the list of examples, breaches of those regulations respecting trade and industry which have been enumerated in a previous section.

§14.—Private Grievances and Disputes.

The leet jurors in Southampton, as in other towns,²⁰ evidently found themselves called upon by general desire to perform

1 E.g., 1666, § 55.	3 1689, § 89.	5 1596, § 93.	4 1575, § 68.
5 1590, § 1.	6 1581, § 4.	7 1601, § 82.	8 1602, § 77.
9 1573, § 51.	10 1571, § 78.	11 1577, § 56.	12 1601, § 8.
13 E.g., 1550, §§ 45-50, and nearly every subsequent year.			
14 1569, § 41.	15 1566, § 86.	16 1566, § 54.	17 1604, § 74.

13 1576, § 76. Few things help us more effectively to realise the regimentation of mediæval and early modern society in England than do the sumptuary laws of the period. Just as it was true that every worker was, to some extent, a public official (and every idler wholly a public nuisance), so was it true that every costume was, to some extent, a uniform revealing the rank and condition of its wearer (see above, p. 123). Hence, 1576, § 76, the twelve men present that "dyvers women in this towne doo not weare whyte cappes but hatts contrarie to the statute, as yt may appeere by the churchwardens theire presentments every weecke, as Bones wiffe, Paullie Elliots wyffe, Robt Crosses wiff, & Lawrence Grosse's wiffe." See also the still more detailed entry, 1577, § 98, and the elaborate description of the official apparel of the mayor, aldermen, etc., 1576, § 90.

¹⁹ 1651, § 42.

²⁰ Cf. Challeuor's *Abington*, Appendix, pp. xxv.-xxvi.

another function which by no stretch of imagination can be regarded as incumbent upon them, and from which it would seem the lawyers (for reasons not difficult to guess) were anxious to exclude them. They were called upon to redress private grievances and to settle private disputes. Their constitution and position made them, in fact, an admirable body of arbitrators. They were of high local rank, they had an official dignity which invested them with authority, they were regularly engaged in semi-judicial enquiries. But what commended them to the commonalty (and no doubt dis-commended them to the lawyers) was that they did not and could not take fees. Their adjudications obviated litigation. For example, the lawyers, without question, were baulked of a lot of profitable business in 1601, when the twelve men settled a dispute between Mr. Knight, lord of the St. Denis manor, and Sir Michael Blunt respecting a watercourse.¹ Similar un-legal (and, the lawyers probably would have liked to say, illegal) adjudication took place in many other cases, *e.g.*, respecting damage done to Thomas Cooper's house by Robert Foster;² annoyance caused by Mr. Baker's gutter to Richard Dosse's backyard;³ injury to Matthew Manhat's wall by John Harrison's wood and casks⁴; pollution of John Symons's well by Thomas Brooker's stable;⁵ destruction of Emery Lake's garden by the tumbling down of Arthur Pitt's wall;⁶ the blocking up of Nicholas Roche's ancient lights by Bernard Courtmell's new buildings;⁷ the spoiling of Robert Vaughan's land by Harry Hellier's bad work on the waterpipe from the friar's conduit;⁸ and a dispute between Mr. William Wallop, mayor, and John Grant "of and concerninge a hedge or fence in the garden of the said Mr. Wallopp maior in theastreat."⁹ Those who have studied the emphatic declarations of the legal theorists to the effect that "private grievances" are wholly outside the purview of leet jurors, will realise the remarkably un-leet-like character of all these matters of presentment.

1 1601, § 80; the substance of a very lengthy entry is that Mr. Knight, of St. Denis, complains that Sir Michael Blunt's servants or workmen have diverted and narrowed the course of a stream which issued from Mr. Knight's estate, and, after crossing Portswood Street, passed through Sir Michael's land to the sea. The jury, having heard the evidence of seven old men of Portswood and Stoneham, decide in favour of Mr. Knight, and say that "for a continuance of love betwene these two gentes," their "lovinge neighbours and well-beloved friends," they "order, agree, conclude and ordaine that the said Sir Michall Blunte shall on thisside the feast of St. Michael tharchaungell" restore things to their former state.

2 1551, § 41.

3 1551, § 44.

4 1573, § 57.

5 1575, § 51.

6 1675, § 54.

7 1677, § 82.

8 1589, § 98.

9 1611, § 60.

§15.—Miscellaneous.

Finally, there are scattered throughout the lawday books, to reward the careful searcher, isolated entries which cannot be reduced to any of the thirteen group-headings given above, or which, for some remarkable features, deserve to be noted independently. Such, taken in chronological order from the published records of the years 1550--1624, appear to me to be the following:—

(a) *Morals*: “John Gyfford and Willm. Bothe, bidells above Barre, upon theyr othes presentith that Robt. Howchin who dwellithe in the magdalen kepith a yonge women in his house who is of ill name & hath byn in his house by the space of ii monethes” [fine of 2/- imposed].¹

(b) *Secret Burial*: “Itm we p^{re}sent that yt is credyblye enformed by div^{er}s wthin this towne of Southmpton that sythens the 10th of Aprill last past ther was a childe borne of the bodye of the wyffe of John Goddard & was fownde deade & so was buryd secretlye the w^{ch} we desyre yo^r worshipps may be farther enquired of.”²

(c) *Laurence Darvall*: “Item we desier that some order may be taken in yo^r good considerations for Lauraunce Dervall soe that he may not wander as he doth vpp and downe the streats the rather in that he is a towne borne childe & his father [Hugh Darvall] was sh^{er}iffe of the towne [in 1574] & of good wealthe whiles he lived here, assuringe yo^r wo^{sh}ips the spectaclie to all straungers and others is verie evill & lamentable yt were good in our opinions that he were kept vpp in some close howse for some time and not suffered to drinck so muche as he doth, and no doubt but it may be a meanes to restore him to his wonted minde againe.” A note in the margin adds: “M^r. Maior vnder-taketh to send him to Ireland & some be of y^e opinion tha^t yf he were sent to bedlem in London he might yet be cured of his weaknesse.” Then follows a later note in another hand: “He is sent away to the Low Countries.”³

(d) *A Parson's Salary*: “Item we p^{re}sent Mr. Drake hath complayned vnto vs of manie his poore parishioners w^{ch} are tennaunts & vndertenn^{ants} in the parishe of All S^ts whoe refuse to

¹ 1571, § 1. Cf. also 1601, § 98, and 1616, § 112.

² 1576, § 74.

³ 1601, § 27. Cf. also 1600, § 43.

paye him his duties w^{ch} ought better to be regarded, we have thought fitt to commend it to yo^r wo^r good considerations, not doubtinge but vppon your knowleges of the persons names whereof we have advised Mr. Drake to give yo^u there p^{ar}ticulars, yo^u maye of yo^r owne aucthorities and of yo^r wo^{rships} good discre^{re}tions and inclinations to the minister of Gods worde, yo^u wilbe pleased to convene all the said persons before yo^u into the Awdit Howse & requier them to make satisfaction vuto Mr. Drake of his said duties and demaunds w^{ch} we refferr to yo^{ur} wo^{rships} good advisem^{ents}.”¹

(e) *A Local Charity*: “Item wee p^{re}sent that wereas there was geven by Mr. Jacomoy Demarin to the poore of this towne £100 w^{ch} is to yealde them tenne pounds by the yeare, the same £10 p^{er} ann^{um} beinge the poores money, yt is flytt the same should be bestoed on them to there most good w^{ch} wee thincke should be if the sayd £10 were yearly towards winter employed in woollen clothe and geven to clothe suche as ar impotent & have most neede.”²

(f) *Contributions for the Sick*: “Itm we present that Mr. Gollopp complayneth vnto vs that there is £4/6/4 dew vuto him for monie he laid out to reliefe of the infected people, we desier that those that are behinde and have not contributed accordinge to there tax sett vppon them may be constrayned to paye the same (or) otherwise dealt wthall by lawe and that he the sayd Mr. Gollop may be payd.”

(g) *Divine Service*: “Imp^{ri}mis as concerninge the Church and Governm^{ent} of the same, we finde all things well save onelye the vnreverent speaches heerafter incerted in this our booke of p^{re}sentments vsed by Peter Greenawaye Tayler and Richard his sonn, wherevnto we refferr yo^r wo^{rps}.”³

(h) *Unreverent Speeches*: “Itm we present Peter Greenawaye and Richard Greenawaye his sonn for certaine irreligious and blasphemous words first vttered wthout the liberties of this towne by the sonn & afterward by the father related heere, the substaunce whereof was that callinge for a paire [pack] of cardes the said Richard Greenaway saide he woulde fiude as muche divinitie theare as in the ministers booke, comparinge the ace, dewce and traye of the cards vnto the Father, Sonn and Hollye Ghoast in Trinitie; of w^{ch} we have sundrie enformations by

oathe, and the same acknowledged and confessed by the said Peter, theire vnreverent carriage of themselves, the evill it maye give to weake persons and the killinge of that reverend respect that all in generall are bounde as X'tians [Christians] to acknowledge to the sacred dietie, we thincke to be worthie of severa punishment^{n^t}, w^{ch} we referr vnto your wo^{rp^s} considerations, either by your powers to chastice or to remitt them to the jurisdiction of the spirituall auctoritie. Moreover the said Peter beinge charged wth other vnbeeseeming speaches, confessed that he hadd related amongst his companions that a controversie shoulde be in heaven betwene S^r Peter and S^r Paule insomuche that S^r Peeter shoulde exclud S^r Paule forth of heaven and that Pawle there vppon descended into hell, wheare beinge soe hollye a man the divells forsooke there infernall habitacons and dispersed themselves vppon the face of the Earth where they employed themselves onelye in makinge of puritanes. Soe it seemes that neither God himselfe nor his appostles cann escape there filthie lavishe mowthes, furthermore the said Peter Greenaway in his meetings conferringe wth Richard Kent the beerebrewer about certaine defaults that were objected by some of this towne against the saide Greenawaye he most depravinglye saide that neither such base fellowes as we of the jurye shoulde censure or determine his buisines nor others of this towne, but other persons of higher qualitie, w^{ch} his words of disgrace vnto vs we hope your wo^{rp^s} will touche, consideringe the nature of our place, whoe request to be favoured and countennaunced by your authorities." ¹

CHAPTER XXVII.—THE PRESENTMENTS.

(III.) WHAT THEY DISCLOSE.

§1.—The Sphere of the Court.

The above study of the nature and the contents of the presentments made in the Southampton "lawday" in the sixteenth and seventeenth centuries, leads us, I think, irresistibly to the two-fold conclusion that the "lawday" was on the one hand much less, and on the other hand much more, than a court leet

of the type defined in the court keepers' guides. It was much less in its executive power; it was much more in its inquisitorial scope. Whereas the court leet of legal theory both presented and punished a certain more or less clearly defined class of public offences, the Southampton "lawday" presented anything and everything, but on its own authority punished nothing. The "twelve men," unlike genuine leet-jurors, were the mere agents of an active, vigilant, and jealous master, viz., the mayor, aldermen, and burgesses of the borough corporate. Of course, the fact that the twelve were, as a rule, themselves members, and their leaders high official members, of the governing assembly, generally obviated friction and made subservience natural and easy. The relation of the twelve to the municipal assembly was that of a part to the whole, that of a sub-committee to the council from which it was drawn.¹ The work of the twelve was primarily that performed at the present day by a large and various group of paid officials—sanitary inspectors, public health officers, inspectors of weights and measures, police constables, park-keepers, assistants to the borough engineer, and so on. The presentments of the twelve were, therefore, of the nature of reports, and their scope and contents were determined not by a consideration of the powers of the body which made them, so much as by the consideration of the powers of the body to whom they were ultimately made.² Hence the almost limitless variety of the entries in the books handed in year after year by the twelve to the assembly.

§2.—The Relation of the Lawday to the Assembly.

The relation of the lawday to the assembly, of the "twelve men" to the lord of the leet, was not invariably harmonious. Even officials—especially unpaid ones—can be recalcitrant; even committees can come to be at loggerheads with their parent authority. Those who read carefully the books of the period 1617-1624³ will find evidence that at that time a considerable conflict was being waged between two rival factions, the one dominant in the "lawday," the other in the assembly, on this

¹ For a good example see 1581, § 117. Note also the express statements contained in 1605, § 83, and 1619, § 107: e.g., "Wee will not derogate from the power of the magistrate and assistant, but in all humbleness submyt ourselves unto all their lawful proceedings."

² This fact is well illustrated by 1581, § 55: "Item we present that the ferry menne or those that ought to keepe the passage at heethe [Hythe] and Itchen fery, *beeing within our admiralty*, doo moost tymes neglect theire dweties," etc. The point is that Hythe and Itchen, though within the admiralty jurisdiction of the mayor, were wholly outside those "liberties of the borough" which the burgesses perambulated once a year, and within which alone leet jurisdiction could be lawfully exercised.

³ Vol. I., pp. 516-604.

very question of the nature of the court and the powers of the "twelve men." One gathers that of the two parties, the first, guided and directed by the town-clerk, the steward of the court, was strong in legal theory, and wished to reduce the sphere of the court's jurisdiction to the limits assigned in the guides to the ideal court leet, and incidentally to remove the court from its ancient meeting-place to the Guildhall, where, free from mob-interference and emancipated from traditional irregularity, it might be re-formed and normalised; while the other party, strong in ancient custom and supported by the commonalty, was determined to maintain the ancient order—the old wide sweep of lawday jurisdiction, the independence of the "twelve men" from restrictions proper only to leet jurors, the immemorial meeting at Cutthorn, the sports, the feasts, the popular holiday. The restrictive party formally denied the power and right of the twelve to issue orders respecting such persons as inmates,¹ or such matters as the cleansing of the streets,² or to take cognisance at all of such affairs of private concern as the letting of the petty customs,³ the fees of the town clerk,⁴ or the order of his precedence.⁵ They further showed at once their policy and their irritation by blunt and contemptuous refusal of requests of the twelve,⁶ by rejection of presentments as "incerten,"⁷ by the curt statement, in one case, that "the jurie cann ympose noe such payment" as 26/8 on John Grant for not repairing his bulwarks,⁸ and by the assertion, in another case, that if Mr. Darvall is to be compelled to drain the Salt Marsh it must be "by the governments of his lease and not by ymposing of a payne by the jury of a leet."⁹ The climax was reached when they threatened "the graunde jurie or some of them" with the Star Chamber unless they kept more strictly to their proper business.¹⁰ In reply, "the graunde jurie or some of them"—those, presumably, who belonged to the party of the supporters of ancient tradition and custom—made vigorous protests,¹¹ attacked their enemies,¹² repeated their orders,¹³ continued their presentments as of old, and struggled to get back to Cutthorn,¹⁴

1 1618, § 15.

2 1618, § 16; 1620, § 9.

3 1619, § 107.

4 1623, § 40.

5 1623, § 41.

6 1620, § 5, and §§ 13, 14.

7 1620, § 26. Cf. also 1615, § 118.

8 1620, § 28.

9 1620, § 30.

10 1620, § 79.

11 1619, § 107: "Whereas yt hath byne alledged that these buisnesses are neither fittinge but Impertinent to be handled by this jurye not belinge part of their chardge, wee doe hold yt most requisite for dyvers consideracons, as wee now stand swornen to procure all wholesome and benyfficiall good that maye stand with right and justice of this towne, as also not to lett slipp anye occasion but gyve notyce unto your worships of anye thinge that maye prejudice the same," etc., etc. Cf. also 1620, § 79.

12 1623, §§ 40, 41.

13 1623, § 32: cf. with 1620, § 13.

14 1620, § 65, and 1624, § 58.

until, it would appear, in 1625, in the mayoralty of John Elzey, they achieved a temporary triumph.¹

This conflict, however, bitter though it seems to have been, was merely a passing aberration due, one suspects, to the advent of an aggressive legal theory propounded by an ardent reforming lawyer who wished to reduce an ill-defined "lawday" to the condition of a well-defined "court leet." Moreover, it was, it would appear, a conflict not between the "twelve men" and the corporation, not between "lawday" and assembly, but between factions represented in each. It was when John Elzey, a leet juror in 1619 and 1620, in 1625 became mayor, that (if my surmises are correct) the party of tradition became dominant for the moment in both bodies, that the court was moved back to Cutthorn, that the town-clerk was discomfited, and that he, in revenge, erased from the title the words "venerabilis vir" from before the name of the reactionary mayor. The fact that during the later Commonwealth period the court regularly met at Cutthorn indicates that the party of tradition was more or less identical with the democratic, Puritan, Roundhead party in the borough, and therefore that the opposing party was bureaucratic and Royalist in its tone.²

CHAPTER XXVIII.—THE ENFORCEMENT OF THE PRESENTMENTS.

§1.—The Question.

The picture of the Southampton "lawday" which is revealed by the records of the period under review (1550-1750) is that of a court already deep sunk in decay and continuously sinking deeper. It bears traces of an old-time possession of larger powers—powers of summary amercement and powers of specific redress³—relics in all probability of a day anterior to the rise of the municipal corporation, with its mayor and burgesses, anterior, too, to the rise of the still earlier merchant guild, with

¹ See above, p. 176.

² This local constitutional conflict concerning leet jurisdiction has interesting analogies with the great struggle anent Star Chamber jurisdiction, which was at that very time agitating the minds of king and parliament. It will be noted, however, that the positions of the two parties were here reversed.

³ Cf. 1575, § 77; 1611, Note 1 at end; 1613, § 108.

its aldermen, discreets, and guild-brethren. But that day of independent jurisdiction is shown by the very first of the extant rolls to be completely past. The "twelve men" are seen therein to be the mere agents of a higher local authority, viz., the municipal corporation (into which the merchant guild had almost merged its identity), and, in particular, that judicial portion of it, "their worships" the magistrates, the nine leading burgesses who, under the charter of Henry IV., had been endowed with the prerogatives of justices of the peace. The presentments of the "twelve men" appear, therefore, from the beginning of the recorded era to be of the nature of informations, recommendations, reminders, complaints, suggestions, and requests, rather than verdicts enforceable by summary amercement, and from which there is no appeal. This fact has already been dwelt upon,¹ and it is referred to again here only in order to prepare the way for the further question, What happened in the case of the presentments made and the penalties assessed?

§2.—The Answer.

The answer, in so far as it can be given, is contained in the *Court Leet Books* themselves, supplemented, to a slight extent, by the *Assembly Books* and the *Sessions of Peace Books*. The *Court Leet Books* tell us most; on the one hand, through the marginal comments which were inserted after the books were handed in to the assembly,² on the other hand, through the mere recurrence of series of entries year after year. As a rule a considerable amount of formal respect was paid to the presentments of the twelve; their complaints were listened to, their amercements confirmed, their recommendations sanctioned with the authoritative word "fiat."³ But what beyond this? Occasionally we have evidence that effective action was taken. Thus the miller who put "a pottle or more of the sande of the sea" into the sack of wheat which he had to grind was actually punished in the pillory (1600, § 71); thus, too, Edward Exton, who was amerced to the extent of £3/6/8 for his refusal to do his duty on the leet jury, actually "paide this £3/6/8 everie penye in the awdit howse at the whole assemblye" (1613, § 96). Sometimes, though very rarely, on the other hand,

¹ See above, p. 198.

² I much regret that in the printed records these marginal comments have been given only in exceptional cases.

³ The selected marginal comments for A.D. 1605 (q.v.) furnish good examples.

we find cases in which the presentments of the "twelve men" were deliberately set aside. Conspicuously the most notable of these is provided by 1602, § 35, where a whole entry is scored out and is condemned to nullity as "a malycyous and factyous presentment"—an instance of traverse, it may be remarked in passing, which would have been wholly impossible in a court leet proper. But more generally, it would appear, there was neither formal repudiation on the one side, nor active enforcement on the other; there was simple neglect. Requests were merely not complied with, abuses not remedied, amercements not levied, orders not executed. This is evidenced by the otherwise unnecessary recurrence of similar or identical presentments in series year after year. Three examples will suffice; first, every extant book from 1551 to 1571 has at or near the beginning an entry to the effect that "John Reuiger gent. hath not sett up hys raylles as he hade in comandement the last yere," therefore be it commanded, etc.; secondly, the book of 1604—to take the first that comes to hand—contains no less than thirty-nine presentments which state or imply the failure of similar presentments in preceding years; finally, to give the crowning instance, the book of 1652 presents as "very needfull" certain sanitary reforms at the back of the walls between the East Gate and God's House Gate, and the margin adds "fiat," yet (can it be believed?) that entry is repeated, with scarcely the change of a word, in every book down to that of 1778—that is, the same presentment was vainly made year by year for over a century and a quarter! No wonder that the twelve men now and again uttered sharp protests, complained of wasted toil and of opprobrium incurred to no purpose, and threatened to lay down their burdensome and useless offices.¹

In short, if an ordinary court leet was weak on its executive side, the Southampton lawday was much more so. The curse of ineffectiveness was upon it. At the very beginning of its recorded days it was obviously beginning to sink into the querulous decrepitude of senility.

¹ The best example is 1605, § 88, quoted above, p. 204.

CHAPTER XXIX.—DESCRIPTIVE SUMMARY.

§1.—Introductory.

It is now possible, I think, for us to picture before our mind's eye, at any rate in outline, the court leet of Southampton as it existed in the sixteenth, seventeenth, and early eighteenth centuries. The following is a brief description of what seems to present itself :—

§2.—Before the Court Day.

Some days before "the Tuesday next after Hock-Tuesday" the court is proclaimed,¹ the panel of the jury is drawn up by the steward and laid before the assembly for acceptance, the formal portion of the lawday book (containing the title, the freesuitors', jurors', and beadles' lists, the stall and art tables, and the stock-presentments) is written out in neat and leisured hand.

§3.—On the Court Day.

Early in the morning of the day of meeting, which is a general holiday for all the town, the burgesses gather on horseback² outside the Bargate ready to accompany the mayor on the annual beating of the bounds. In due time they set out, followed by a good-natured but wildly unruly mob of artificers, apprentices, and others eager to vent their hilarity in practical jokes. The company proceed to the western shore and along by the water's edge till they reach the little stream that runs under Acard's bridge hard by the village of Hill.³ Here they come upon debateable ground, for which they are prepared to fight whether by force of fist or by might of law.⁴ They claim to cross the

¹ In 1623 the two beadles of Holy Rood are fined 40/- each because they have not given due notice to the inhabitants of their ward of the holding of the court leet and of their duty to attend it.

² Cf. 1594, § 37: "Item we present that we thincke it a discredd that bourgeses of this towne should come vnto the place of Cutborne appointed for our lawe dayes on foote, but we thinks it requesite that everye bourgesse doe attend thither mr. mayor on horsbacke as heertofore hath beene acustomed vppon paine of fforfeiture of every man that shall goe afoote 2/6 a peece, and in lyke order to retourne wth mr. maior the circuit of the townes lyberties acordugly and further be it appointed that noe burgies take anye jorneye to be absent at the lawe daye vnlles he aske leve of mr. maior 2 or 3 dayes before he shall so take his jorneye."

³ This bridge, I gather, used to stand close to the present Sidford Street entrance to the West Station.

⁴ Cf. 1596, § 92.

bridge and pass through the village of Hill, thus bringing all the parts of it east of the present Sidford Street and Hill Lane within their jurisdiction; the villagers of Hill contend that the stream is the limit of the borough boundary, and that the perambulating crowd must not cross the bridge but must march up the left bank of the stream (past the site of the modern "Crown and Anchor" hotel in the dip of Commercial Road) till they reach the "dell" of the Banister estate. Whichever way they go, at the edge of the Banister estate they meet another jealous enemy, who claims that his lands are outside the borough's liberties. If the town asserts its claim—as probably it generally does—the mob proceeds straight up Hill Lane, along the western frontier of the estate (from the present Milton Road to the Cemetery); if it does not, it has to wind its way circuitously to Hill Lane round the southern, eastern, and northern bounds. In either case, into Hill Lane (close to the site of the modern cemetery) the perambulators eventually get. Thence their course is clear. They proceed up the lane, due north, as far as the Hode cross, where, as at every other boundary mark, the "colts," *i.e.*, persons who are making the tour for the first time, are subjected to some rough horseplay calculated to impress the spot on their memories. From the Hode cross the crowd turns sharp westward and advances to the Cutthorn cross (at the top of the Avenue), and to Cutthorn itself hard by. There they find that great preparations have been made for their reception. The mound has been defended from the populace; boards have been erected into a platform for the jurors; a booth has been set up outside the enclosure; viands and wood have been collected, and all things are ready for a feast. Into the enclosure go the mayor, the steward, the jurors, the burgesses, the officers, and such others as have business at the court. The formal part of the procedure is rapidly run through—the swearing in of the jurors, the calling of the freesuitors' roll and the rolls of the resiants presented by the beadles, the installation of officers for the new communal year. Then comes the opportunity for jurors to call public attention to things out of order and needing remedy, for officers to make their complaints, for burgesses and resiants openly to notify grievances for which they crave the vigilance of the twelve. All these matters are reserved for future consideration—for inclusion, if thought worthy, in the book. These formalities ended, the great business of the meal comes on, and the company gives itself up to jollity.

When the prolonged festivities are at length concluded, the riding of the circuit is resumed, the company (considerably reduced in numbers) proceeding "from Cutted thorne cross to the Berrell stone cross east at Burggeis streat ende and so alonge Burgeis streat and through Langhorne geats unto Haven stone in Hilton uppon the water side east and so from haven stone alonge as the water lyeth unto Hedgstone at Blackworthe sowthe, and from Hedgstone as the water lyeth to Itchen southe and from Itchen as the water lyeth to the Meason Dieu gate of Suthampton west."¹ Within the walls the company disperse, the twelve men going to sup together in order to discuss the events of the day and to consider the duties of the days to come.

§4.—After the Court Day.

The real and serious work of the "twelve men" begins after the court day. For the next couple of months or so the twelve are engaged in examining alleged encroachments; in viewing pavements, gutters, ditches, hedges, walls; in scenting out nuisances; in inspecting weights and measures; in performing the countless other tasks which come within the sphere of their functions. Finally, their work completed, they enter the presentments on which they are agreed in a book,² and this, guaranteed by their signatures, they hand over to the municipal assembly. In due course the assembly considers it, item by item, and as a rule it causes its decision to be entered in the margin—with what effect we have seen. It would appear that generally with the handing in of the book the term of service of the twelve men comes to an end, that they are discharged, and that whatever of their work has to be performed later falls to the lot of the borough officers.

¹ 1596, § 92.

² Cf. 1550, § 83.

SECTION II.—(c) The Period of the Reporters.¹

CHAPTER XXX.—THE RECORDS OF THE PERIOD 1750-1907.

§1.—Introductory.

Although the records for this period exist in a fairly complete and unbroken series,² they are almost devoid of interest. Even before the year 1750 the presentments were becoming, for the most part, stereotyped and formal; a body of some two dozen entries was transcribed without change in substance³ or order from one book to another, and only a few new presentments, relating to persistent pigsties, encroachments, and defective weights and measures, were added.

§2.—Formal Presentments.

The stereotyped entries—for the most part mere statements of general orders or ancient customs—relate to the following matters: (1) the bounds, (2) sanitary reform between the East Gate and God's House Gate, (3) orders for the drivers of the common, (4) marking of cattle, (5) mangy cattle, (6) dogs in the streets, (7) freeholders and freesuitors, (8) gauge of beer-barrels, (9) fences, (10) admiralty courts, (11) cowherds' office, (12) the bowling-green and the town ditches, (13) Houndwell, (14) Hythe boats, (15) Itchen ferry, (16) quart measures, (17) scavage money, (18) iron-bound carts, (19) fire engines, (20) coal bushels, (21) the assize of bricks, (22) billiard tables. Occasionally one or another entry was dropped and forgotten, as, for example, the second in 1778; but the list remained but little altered or diminished down to 1789. The records fail us from 1789 to 1795;⁴ and when we take up the book of 1795, we find that there has been a clean sweep of every formal presentment except that giving the enumeration of the bounds. The 1796 book is similarly blank; the 1797 book records again;

¹ Under this heading is included the history of the court lect from 1750 onward. See footnote at the beginning of this section, p. 161.

² E.g., thirty books for the forty years 1760-1800.

³ Except for such errors of transcription as that which, in 1694, transformed "free burgage tenure" into "free bargains": see above, p. 185.

⁴ Was the court itself intermitted during those years?

in addition to the bounds, the presentments numbered 3, 9, 10, and 11 in the list above; but the next book (of date 1802) once more, from among all the old formal series, gives the bounds only. From that time onward the rule is that the court leet book contains merely the enumeration of the bounds, supplemented by a few presentments concerning pigsties, encroachments, or defective weights—and of these three the encroachments eventually become the sole survivor.

§3.—Procedure.

One item of interesting information, however, the eighteenth and early-nineteenth century books very generally give us. They tell us when the book was brought in to the Audit House and laid before the assembly, and they show us that (no doubt under the influence of legal theory) the practice of appointing affeerors to assess the penalties for encroachments and other offences had established itself. The following example from the book for 1761 will suffice as an illustration:—In 1761 the lawday was April 14th; the book, signed by the jurors, was brought to the Audit House on July 24th, when two affeerors were nominated; on July 31st the affeerors were sworn in; on August 7th they met and affeered the presentments; finally, on September 4th, the book was again laid before the assembly at the Audit House.

CHAPTER XXXI.—INFORMATION FROM EXTERNAL SOURCES.

§1.—The Sources.

It is fortunate for the student of leet jurisdiction in Southampton that the meagre and formal entries of the records of this later period are supplemented by valuable information from external sources. The court is mentioned by Speed in his MS. *History of Southampton*, of date 1770.¹ The *Hampshire Chronicle* reports the proceedings of 1774 and 1775. The *Hampshire Advertiser* from 1823, the *Hampshire Independent* from 1835, and the *Southampton Times* from 1860, give fairly regular notices

¹ This MS., kept in the Audit House, is being prepared for publication by Miss E. R. Aubrey, M.A., for the Southampton Record Society.

of the holding of the court. Finally, the *Municipal Commissioners' Report* of 1835, and the *Records Commissioners' Report* of 1837 contain lengthy and useful descriptions of the venerable though then decadent lawday.

§2.—Speed's History of Southampton, 1770.

The following is Speed's description: "The ancient custom was to hold a court leet at the Cutted-thorn where a place was enclosed for that purpose, and all the inhabitants were summoned to ride the bounds and attend the court every year on the third Tuesday after Easter on the penalty of one penny for every defaulter: a dinner was provided there at the expense of the corporation. They came afterwards to hold their court in town in the morning, and rode the bounds in the afternoon, and at their return the sheriff gave a supper to the whole company; but within a very few years this has been left off, and they hold their court in town, and the mayor and sheriff, very poorly attended, ride the bounds in a kind of private manner."¹

§3.—The Hampshire Chronicle, 1774 and 1775.

This paper, the first printed in the county,² was established in Southampton in 1772. In 1778 its headquarters were moved to Winchester, where from that day to this they have remained. During its brief Southampton period it twice noted the holding of the court leet.³ In 1774, under date May 2nd, it reports that: "On Tuesday last the mayor, sheriff, and court leet jury, attended by a great number of the inhabitants, rode the bounds of the town (or, as it was usually called, Cutthorn) according to annual custom." Next year, in the issue of May 15th, 1775, the account is fuller: "Tuesday morning last the mayor and sheriff, attended by the officers of the corporation and a considerable number of inhabitants, rode the boundaries of this town according to annual custom. They arrived at the usual place of refreshment [What a description of a court of justice!] called Cutthorn at 1.0 p.m., where a cold collation was provided by Mr. Sheriff Ward, to which between 80 and 100 persons sat down under a tent judiciously erected for that purpose. After the company had eaten, the remaining provisions were dis-

¹ Speed's *History*, Chap. IV., on "The Liberties or Precincts." In Appendix A is given the table of "Expenses of a Lawday at Cutthorn," which has been quoted above, p. 167.

² The earlier *Winchester Journal or Weekly Review*, 1743-(?)1746, was printed at Reading.

³ These extracts have been hunted out and transcribed for me by Alderman W. H. Jacob, J.P., the well-known Winchester antiquary, one of the present proprietors of this old-established county paper.

tributed amongst the populace. After regaling with wine, etc., two or three hours, the perambulation continued and the cavalcade came into town about 4.0 p.m., expressing themselves much pleased with the liberal hospitality of the sheriff, who, with the leet, supped at the George Inn, where the utmost harmony, cheerfulness, and good humour abounded." One would gather from these two extracts that a court leet was a sort of municipal picnic!

§4.—The Hampshire Advertiser, 1823-35.

The *Hampshire Advertiser* (called till 1831 the *Southampton Herald*), a vigorous and ably-conducted Conservative weekly paper, seems to have been the sole news-sheet published in Southampton from 1823 until the Liberals started a formidable rival, the *Hampshire Independent*, in 1835.¹ During those twelve years only twice was the court leet ceremony reported, viz., in 1824 and 1829. In the former year the court was held before the mayor, two aldermen, and one bailiff. "After the oath had been administered, Mr. Marett rose and addressed the members of the leet on the nature of the oath which they had taken, and urged on them the necessity of the strict and fearless discharge of their duties. He pointed out many things which demanded their particular attention" (e.g., infractions on right of common and disgraceful state of St. George's market). "If the court leet would perform their duty they would find him ready to take the necessary steps in promoting the public good."² Efforts of this kind, made frequently during the course of the century, to revive the flagging energies of the court, always proved unavailing. In 1829, under date May 16th, the report is summary: "The court leet perambulated the boundaries of the town last Tuesday, after which they partook of a sumptuous dinner at the Audit House, given by James Le Feuvre, Esq., sheriff."

§5.—The Municipal Corporations Report, 1835.

The report contains³ an exceedingly valuable detailed description of the unreformed government of Southampton. The portion relevant to our subject is as follows: "The court leet is

¹ The conflicts of these two papers during the middle decades of the nineteenth century afford most diverting reading. They are at the present day both under the same management, and their files repose peacefully side by side at 45, Above Bar. I am much obliged to Mr. Henry King, the managing director of the proprietary company, for his courteous permission to search the old issues of each of them.

² *Southampton Herald*, May 17th, 1824. It will be noted that this was the very year in which Mr. Marett's name was added to the freesultors' list: see above, p. 185.

³ Appendix, Part. II., pp. 869-892.

held on the third Tuesday after Easter Tuesday. It is adjourned from time to time to no particular day, but to such day as the jury shall be summoned for. The court is held before the mayor and aldermen as lords of the leet, and the town clerk as steward and judge. The jury are summoned from the same class of persons as the petty jury at the quarter sessions, with the exception of the bailiffs, who are always summoned, and of the sheriff, who is always foreman. They make presentments relating to encroachments on the highways and common fields. They were until lately in the habit of visiting the shops and markets for the purpose of examining the weights and measures; since an inspector has been appointed by the justices at sessions under the Act for regulating weights and measures they have in a great degree discontinued this duty. They have also a visitatorial power over the free school; how this has been acquired is not known. The presentments are signed by the jury, and ought then to be returned by the sheriff to the common council; this, however, is not regularly done. The presentments are not entered in the books of the common council: a memorandum is sometimes made of the fact that presentments have been made. The books, however, are not kept in a very precise manner. It appears to be taken for granted by the common council that the sheriff will draw their attention to anything important in the presentments, and in point of fact, when this is done, they do take the subject into consideration and take such steps as seem to them advisable. It is evident that they are not, as common council, peculiarly called upon to notice presentments of the court leet, the legal results of which can only be obtained through the court leet itself; but some dissatisfaction seemed to exist amongst the inhabitants from the idea that proper effect was not given by the common council to the presentments. In one instance suspicion was entertained that this arose from a wish on the part of the common council to favour a member of their own body against whom the presentment was directed. We are convinced that this was not the case; but the feeling is evidence of a want of confidence in the governing body of the corporation." It will be noted that the whole tone of this report is practical. It embodies the results of the investigations of men whose object was municipal reform.

§6.—The Public Records Report, 1837.

This report is, of course, of a wholly different character from the last. Its object is not administrative reconstruction, but the

diffusion of knowledge. Its information is therefore of a different order from that of its predecessor. Southampton and its documents are treated with quite exceptional particularity and fullness.¹ The following is the passage which relates to the court leet: "Southampton, being a county of itself, a procession round the boundaries used to be made yearly by the sheriffs, bailiffs, and court leet, a few days previously to which the housekeepers were summoned to attend, and a fine of one penny was imposed upon all those who did not choose to take part in the ceremony. This custom is commonly known by the name of Cutthorn from the circumstance of the court having been formerly holden at a particular spot on Southampton common called the 'Cutted Thorn,' now planted with trees. It is still the custom to depute a few persons from the court leet to perambulate the bounds of the town and county, but the grand procession now takes place only once in five or seven years, at the discretion of the sheriff, and it now sets out on the morning of the second Tuesday after Easter week, anciently termed 'Hock Tuesday' or 'Hock Day,'² from the Bargate, and, having made a complete circuit of the county, re-enters the town at the south-eastern gate. At the respective meer or boundary stones on the road it was formerly usual to perform various ludicrous ceremonies called 'colts' over those persons who had never before attended the procession, but this practice is now almost wholly discontinued."

§7.—The Hampshire Advertiser and the Hampshire Independent, 1835-1907.

For almost every year from 1835 down to the present time there is in one or the other of these papers—usually in both—a report of the court leet proceedings.³ These reports vary immensely in tone and content. Many are merely formal, and therefore unimportant. The following notes, given chronologically under their respective years, seem worthy of preservation:—

1836.—The report speaks of the ceremony as "the mummary," and describes its conclusion in the damnatory clause, "the tom-foolery ended."⁴

¹ Appendix VIII., pp. 483-95.

² This is an error. It should be "the Tuesday after Hock-Tuesday."

³ For the period 1835-1873 there are not more than eight omissions, viz., 1835¹ 40, 42, 43, 54, 65, 67, and 69.

⁴ *Hants Adv.*, April 30th, 1836.

1838.—After relating how the mayor proceeded in his robes to the Guildhall, the notice continues: "We have on former occasions exposed the absurdity of the business done in this court, the profanity of making a number of persons take a number of unnecessary oaths, and the shameful neglect of what might be beneficial, as for example the beating the bounds and preventing encroachments on public lands." Farther on it adds: "We should observe that the pence which it has been usual to collect from persons above twelve years as a fee for being excused doing 'suit and service to the lord of the court' were this year intermitted." Finally, it remarks that "the omission of beating the bounds is very reprehensible."

1839 saw great doings. After an interval of nine years, the bounds were ridden, and ridden for what proved to be the last time. The book for the year merely notes formally that "This day [April 23rd] the court leet rode the bounds of the manor agreeable to ancient custom commonly called riding Cutthorn." The *Hampshire Advertiser* of April 27th devotes two of its columns to an account of the proceedings. The following is a summary. Half-an-hour was spent at the Bargate in getting horses and forming a procession. A full band was in attendance, and with it a mob prepared to enjoy itself; for, says the report, "We need scarcely tell our readers that the riding of the bounds has always been a scene of merriment and practical joke from time immemorial, and it had been determined by all parties to hand this prescript of amusement unimpaired to their successors." The first to take his place was the "venerable town sergeant, Cooper, with official gold-laced three-cornered hat, sash, medal, wand and the other *et ceteras* of office, mounted on a most curious steed that sought acquaintance with every other animal in the road." Then came "the crier *en costume*, mounted on a capital hunter." Soon after followed the three other sergeants, "ricketing in uneasy saddles"; next the jury, fourteen in number, "all well mounted," and with them "about forty horsemen, many of them upon good nags." Last of all appeared the sheriff, Mr. W. H. Steere, leading his horse. When he, wand in hand, "essayed to mount his charger," the music and the shouting for some time prevented him, to the great diversion of the crowd. All being assembled, the procession began its **perambulation**. The crier took the lead, and behind him, in **order**, came the four sergeants, the sheriff, the under-sheriff and

town-clerk side by side, the jurors two by two, and the other horsemen, also in pairs. A number of carriages brought up the rear. The host advanced up the Above Bar Street, then to the left along "the Four Post or Romsey Road" (now Commercial Road) "to where Acorn Bridge formerly stood," and thence up Hill Lane, where, getting clear into the country, "the sergeants, becoming warm, essayed their swiftest horsemanship," while "the crier, with wand in hand couched like a lance, went off at speed followed by him of the mace," and so the rest, "all posting as if for their lives." They paused for a moment to view, by the way, an alleged encroachment of Mr. Atherley on land situate between the Common and Hill Lane. That done, they proceeded to Woody (*i.e.*, Hode) Cross, and there "the crowd of people on foot was considerable, and a tumultuous cry for 'colts' was raised, and the jury were called on to ride round the stone." This was no easy task, for the stone was on the brink of a ditch, two or three feet below the path. Several of the jurors, however, essayed the task in noble devotion to duty, "some coming out with torn clothes and hats and others with bruised knees and shins." From the Woody Cross the now wildly-hilarious crowd surged on past the upper Common gate to Cutthorn, and "as the horsemen plunged into the broken ground encumbered with thicket and underwood, the trees were shook over their heads, hats were lost and found, clothes torn and faces scratched." The customary time for the feast then having arrived, the multitude moved to the adjacent "Cow-herds" inn, *within* whose walls the elect were regaled with a "cold collation" and much oratory, and *without* whose walls the mob was made yet more merry than before with beer, so that when the procession was re-formed a loaf was found tied to the tail of one horse, while the saddle of another had been put back-to-front. Amid much snatching at hats and buttons, the company set out on their way once more and returned to Burgess Street, where-along they passed as far as "Buzehill Stone," in going round which three jurors "lost their hats, which were restored to them in a most dilapidated condition." The next important point touched was "Webb's farm," where the venerable town-sergeant Cooper "was seen with wand in hand to make a sudden leap over his horse's head and descend upon his own," which, happily, proved to be equal to the unexpected emergency. Then the procession crossed the railway—no easy task, owing to embankments and wires—passed

through Northam, and reached the Itchen Ferry, where “the final scene of frolic” took place. “A boat was moored a short distance in the water, and the jury had to pass round it. In it were some wags prepared with buckets of water to welcome the horsemen. Some were drenched and some affronted. Mr. Stephen lost his temper and the tail of his coat. Mr. Scovell, though so dirty, with difficulty bore the process of washing him; young Quick forgot the water below and soon plunged down to aid a friend’s quarrel. Then were seen drippy jurors, prancing steeds, lost wands, and broken hats—uproar, laughter, screams, and revelry, mixed with the music of the band, till, as the members of the cavalcade reformed, a more whimsical spectacle never was witnessed.”

So ended the last perambulation of the bounds. The wish expressed on the occasion by some has remained for nearly seventy years, and is for ever likely to remain, unfulfilled :—

“When next the sheriff goes to ride
May we be there to see !”

On the return to the town the customary business was transacted in the Guildhall.

1840 shows the lull after the storm, the reaction after the activity. “The usual formalities were gone through. No presentments of nuisances, or any proceedings calling for remark took place.”¹

1844.—The court was held on April 30th. The jurors went round to view encroachments, concerning which they made their presentments at the Guildhall on May 8th.²

1845 saw the discussion of two interesting questions in the court leet on April 15th. First, should the jurors, when they view an encroachment, proceed themselves to remove it? The sheriff advised his colleagues “not to pull down gates or fences, but to leave the removal of these impediments and the proceedings necessary for the establishment of the public rights to the Town Council.” Secondly, what is the nature of the hayward’s office, and whence are the hayward’s emoluments derived? It appears that the hayward has the duty, or at any rate the right,

¹ *Hants Indep.*, May 16th, 1840. The *Advertiser* has no report at all.

² See lengthy account in *Hants Adv.*, May 4th, 1844.

to "drive" the common every fortnight, and that "the emoluments of the hayward are derived from occasionally driving the Common—that is, ascertaining if any ratepayer has more than two head of cattle, and, if so, charging him $\frac{3}{6}$ for each. If the owner is not a ratepayer, the fine for recovery is $\frac{7}{6}$. The hayward charges the ratepayers sending beasts in proper form about 2d. per head."¹

1846 witnessed (May 5th) one of the recurrent arguments concerning the use and meaning of it all. "Several of the jury observed that it was useless to make presentments that were not attended to, and said that if they had known before taking their seats that no fine would have been imposed for non-attendance they should not have come—not because their duties were unimportant in themselves, but because their labours would doubtless be as vain in this case as in former years. The clerk said there was a fine of £20 for non-attendance, though it was never enforced. A smaller fine used to be levied, but that had ceased to be exacted a few years ago." The jury visited various encroachments, and agreed to meet the following Tuesday (May 12th), at Guildhall, to present them. On May 12th only six jurors came. "They complained very justly of the neglect of the rest of the jurors," and adjourned to May 19th. On May 19th only nine appeared. One juror (Mr. Carter) refused to sign the eight presentments, and therefore all fell to the ground. Well might they ask, What the use?

1847 and 1848.—The jury viewed, and subsequently presented, *inter alia*, some very grave encroachments—which completely blocked up the immemorial public path along the right bank of the Itchen—made by the new South-Western Steam Navigation Company, Mr. Eliot, cement-maker, Mr. Rubie and Messrs. Summers, Day and Baldock, ship-builders. The presentments were, as usual, entirely ineffective.²

1849.—The ineffectiveness of the previous years' presentments of the Itchen encroachments had brought some ridicule upon the court leet. "The annual farce of a court-leet as it is conducted in Southampton," runs the *Hants Advertiser* report of May 5th, "was held on Tuesday last, being the Turn of Hock, at the

¹ *Hants Adv.*, April 19th, 1845.

² *Hants Adv.*, May 1st, 1847, and May 20th, 1848.

Guildhall." In the court itself the sheriff remarked on the inefficacy of the presentments. No encroachments had been removed except "a post of a peaceful man who would not contest a point with them, and some clothes posts of a few washer-women." The serious encroachments of Messrs. Summers, Day and Baldock, of Messrs. Brown and Gates, of Mr. Rubie and others, which had destroyed the old Itchen pathway, had remained unaffected. "The leet presentments," he continued, "had been laid before the council, the council (through the town clerk) had written; but either no answer had been given, or an answer denying the right. What should be done?" he asked. "Were they prepared to break down the barrier and run the chance of a law-suit? He would not do this except under express command of the council." Hence this year no visits were paid, except to view some posts set up by Mr. C. Cooksey in Vincent's Walk. This done, the sheriff invited the jury to come and view *his* encroachments upon the pantry of the York Hotel.

1850.—At the court of this year, held on April 23rd, the sheriff complained that no notice was taken of the presentments of leets; while one of the jurors vigorously accused the hayward, one Rogers, who had held the office for forty-five years, of neglecting his duties. The mayor asked Rogers what his emoluments were, and he replied that he could not remember exactly, but that they were very little—hardly anything. It was then proposed that Rogers should be superannuated on a pension of "very little, hardly anything." This appalling prospect sharpened the veteran's memory, and he recollected that he made between £30 and £40 a year; but he said that he would be content with £20.¹

1851.—The *Hants Advertiser* for May 17th reports that "many persons were summoned from their homes to the Guildhall on Tuesday to witness the supreme farce of a modern court leet in a municipal town," and it adds that after the charge "the jury were told that there was an end of their duties, as it was not intimated that they should ride the boundaries."

¹ It appears that Rogers actually got a pension of £5. See *Hants Adv.*, April 27th, 1850, April 23rd, 1851.

The later reports show that the proceedings of subsequent years were almost entirely formal.¹ But presentments have never wholly ceased, though they are now made merely verbally and in open court. There are now no viewings of encroachments, no enterings in a book, no pretence of doing more than giving publicity to a demand or an abuse. Occasionally this is effective, and the proper authorities act.² But to what is the lawday fallen! A querulous mumbling of old woes!

CHAPTER XXXII.—DECLINE AND ITS CAUSES.

§1.—Decline.

The story which the reporters tell us is a story of persistent decline, varied by an occasional spasmodic and momentary revival, due to the imparted energy of some devoted official, eager to save a venerable institution from dissolution.

§2.—Causes of Decline.

The causes of the decline are not far to seek.

(1) First and foremost must be placed that executive ineffectiveness of the court which has already been sufficiently illustrated. Even in the one matter to which in its later years it devoted such energies as it had, viz., the prevention of encroachments, it was wholly inoperative except as against offenders of the lowly rank and extreme impotence of washer-women.

(2) As a second cause of decline must be noted the changed character both of the town and the times. If we glance down the main headings under which it has been convenient to group the presentments of the period 1550-1750, we shall find that the principal matters with which the jurors concerned themselves in their more active days, for the most part sank into unimportance in the nineteenth century. For example, cattle ceased to be pastured on the commons; the Magdalens were

¹ In 1868, Mr. Pond, one of the jurors, varied the monotony of the proceedings by making a presentment to the effect that the whole ceremony was an encroachment on the time of the jurors, and by suggesting the abolition of the court as useless.—*Hants Ado.*, May 9th, 1868.

² Thus a few years ago Hode Cross was rescued from destruction at the hands of the jerry-builder.

laid out as parks, the Hoglands and Houndwell as recreation grounds—all in the charge of paid and permanent keepers; the exclusive privileges of burgesses became obsolete; trade and industry passed out of the era of mercantile regulation into the era of freedom; ancient customs died out; roads and streets ceased to depend for repair upon the owners of the contiguous tenements;¹ both walls and archers became unnecessary for the defence of the town; pigs no longer walked the streets, or from backyards offended the nostrils of the inhabitants of what had grown to be a fashionable pleasure resort; stocks, pillory, and cucking stool all became mere antiquarian relics; criers, beadles, drivers, and the other unpaid officials mere pathetic survivals.

(3) The third leading cause of the decline of the Southampton court leet was that such of its old functions as remained important passed, without any exception, into the hands of more energetic and effective local authorities and their agents. Prominent among these must be mentioned—(a) *The Justices of the Peace*, into whose hands (whether acting singly, or in petty sessions, or in quarter sessions) were placed powers and duties, judicial and administrative, so vast and so various that (at any rate until some relief was given by the *County Councils Act* of 1888) they defied all classification except such as could be bestowed by an alphabetical index.² (b) *The reformed Municipal Corporation*, constituted under the Acts of 1835 and 1882. In connection with this new corporate body were, in course of time, appointed various committees which, through the Borough Council and the salaried staffs (clerks and inspectors) of the departments concerned, established an effective control over every branch of local administration, except, of course, the administration of the poor law.³ (c) *The Police Force*. The modern police system is of quite recent origin. It was established for London on the initiative of Sir Robert Peel, when Home Secretary, in 1829.⁴ Its adoption by counties and provincial

¹ A local Paving Act was secured in 1769. Dr. Speed devotes a whole chapter to it (Chap. IX). He had been its strenuous opponent, and he states that it had been obtained "by much sinister management" on the part of persons who had been "seized with the epidemical madness of new paving." Under the act commissioners were appointed to carry out paving, lighting, watching, etc.

² Maitland *Justice and Police* (1886), pp. 79-93.

³ The committees existent at the present time in Southampton are:—Baths, Cemetery, Commerce of the Port, Education, Electricity, Estates, Finance, Fire Brigade, Health, Housing, Loans, Municipal Buildings, Parliamentary, Public Lands and Markets, Public Libraries, Tramways, Watch, Water, and Works.

⁴ 10 Geo. IV., cap. 44.

towns was encouraged and facilitated by an Act of 1839.¹ Finally it was made compulsory in 1856.² The policemen and the police court of the present day are incomparably more effective in the suppression of evil practices and the punishment of evil persons than were the unpaid constables and watchmen, re-inforced by the court leet, in the old times. We witness, without undue regret, the passing away of the ancient order.

¹ 2-3 Vict., cap. 93.

² 19-20 Vict., cap. 69.



Section III.—The other Courts Leet of England and Wales.

CHAPTER XXXIII.—THE PRINCIPLE OF SELECTION.

§1.—The Universality of Mediæval Leet Jurisdiction.

During the later middle ages in *fact*, and in *theory* until the passing of the *Sheriffs Act* of 1887, every man in England and Wales lay within the precinct of some leet. For if he were not within the leet of any manor, municipality, or great franchise, then he was within the king's immediate leet, the sheriff's tourn. In order, therefore, fully to describe the leet jurisdiction of England and Wales as it existed in its prime (say 1285-1485), it would be necessary to get a large-scale map of the country and never to rest until every inch should be assigned to its proper court—never to rest, that is to say, until the grave should grant release from the interminable task. For it would be a task compared with which the constructing from original documents of a map of the states of mediæval Germany would be but child's play. The first thing to do would be to mark out the country into hundreds, which may be taken to be the oldest extant territorial divisions of the whole land, as well as the jurisdictional areas with which the view of frankpledge became peculiarly closely associated. Some difficulty would be found in doing even this preliminary piece of work, for the hundreds were a long time in becoming fixed either in number or extent. With respect to Hampshire, for example, *Domesday* in 1086 gives us 43; a survey of 1316 mentions only 33; another of 1334 enumerates 37; while at the present day there are 39.¹ The next task would be to indicate which of the hundreds at the period under review (a) remained national, or in the hands of the king; (b) had passed in their integrity, as "liberties," into the hands of some

¹ *Shore Hist. of Hampshire* (1892), pp. 158-9. In 1316, of the 33 hundreds only 14 were in the king's hands. The remainder were thus distributed: Queen Margaret, 5; Bishop of Winchester, 5; Prior of St. Swithun's, 4; Abbot of Hyde, Earl of Arundel, Earl of Lancaster, Hugh le Despenser, and William Tracy, one each.

feudal lord; (c) had been absorbed or destroyed in the creation of great franchises and honours. Here the serious difficulty would begin. For it would be found that the feudal system had superimposed itself upon the older communal system, obliterating many of its outlines completely. It would be found, *e.g.*, that the barony of Manchester had been carved out of the three Lancashire hundreds of Salford, Leyland, and West Derby; while the barony of Penwortham had completed the absorption and obliteration of the Leyland hundred; it would be found that great honours, like John of Gaunt's Duchy of Lancaster, had eaten like a cancer into the heart of the national organisation, destroying both its form and its life.¹ Then, finally, to render the task hopeless, it would be necessary to look within the limits of shifting hundreds, changeful liberties, and cumulative honours, and find out what manors, boroughs, and cities, not to mention messuages, had secured the privilege of exemption from the sheriff's tourn, or the steward's great court, and had set up leet courts of their own. The hopelessness of the task would be further enhanced, first, by the fact that frequently the possession of leet jurisdiction was a matter at issue, and one which was settled more by might than by right;² secondly, by the fact that, in consequence, the limits of leet precincts fluctuated incessantly, and that there grew up infinitely complex systems of leets within leets;³ and still more, thirdly and finally, by the fact that leet jurisdiction was a collection of franchises which were capable of such numerous subtractions and divisions, permutations and combinations, that it is sometimes impossible to say respecting courts which existed before the end of the middle ages whether they were leet courts or not.⁴ The truth is, of course, that such a regulation as the assize of bread was everywhere enforceable, and that the right to enforce it was everywhere profitable; so that everywhere there was a struggle between lord and overlord, tenant in chief and mesne tenant, to secure the right. There was a similar conflict respecting the right to claim treasure-

¹ See map and description in G. Armitage-Smith's *John of Gaunt*.

² The *Placita Quo Warranto* are full of examples of usurpations. See some excellent instances from Hampshire—among them Netley and Redbridge—in Shore's *History of Hampshire*, p. 158.

³ For example, the leet of Ashton-under-Lyne lay within that portion of the barony of Manchester which lay within the hundred of Salford, and each of these had a leet court.

⁴ See *Lancaster* in the following chapter. The borough court was empowered to hold, under charter of 1193, the assize of bread and ale, and also the higher franchise of *infangenethef*, or summary jurisdiction over thieves. But the view of frankpledge seems to have remained with the wapentake or hundred-court of Lonsdale. Again, in the case of East Looe, Henry de Bodrigau in 1301 claimed "view of frankpledge, ducking-stool, pillory, and assize of bread and beer." The mere enumeration of these claims is enough to show that they were regarded as separate and independent rights.

trove, waif, stray, felon's goods, and so on. Victory in one case did not, in Edward I.'s time, imply victory in all. It was not till leet jurisdiction became standardised that the struggle acquired a definitely representative character—a conflict of champions for sweepstakes—so that he who captured *visus franciplegii* captured with it all the rest, *omnia quae ad visum pertinent*. The statement, therefore, that every man lay within the precinct of some leet means, when applied to the middle ages, little more than that every subject of the king was under certain rules and regulations (*viz.*, those contained in the articles of the view), and that someone had the privilege of making money out of him if he did not obey them. To map out England and Wales into the spheres of operations of these privileged gleaners of amercements would be about as easy as it would be to draw an ecclesiastical plan of a modern city showing not only its parishes, but also the spheres from which are gathered all the collections levied in all its Catholic and Dissenting churches.

§2.—The Partial Survival of Modern Courts Leet.

If leet jurisdiction had retained its mediæval universality and incorporeality it would have been equally unnecessary and impossible to deal with it geographically. But it did not retain them. On the one hand, it became in many parts of the country wholly extinct; on the other hand, where it survived, it became condensed, precipitated, and crystallised into courts leet. It is thus possible to go round the country and examine, either *in situ* or preserved in the museums of local records, interesting and varied relics of its modern survival. This journey of exploration I have made, though not with all the leisured care which it deserved. I have made it, for the most part, by way of the shelves of the British Museum and through the agency of the Post Office. In the following chapter I enumerate, and briefly describe, the specimens which I have discovered. It will be remembered, then, by those who study these specimens, that I have made a collection of examples of modern courts leet, *not* a collection of mediæval courts with leet jurisdiction, or (what would come to the same thing) of mediæval franchises, manors, boroughs, messuages, etc., etc., exempt from the leet jurisdiction of the sheriff's tourn. That, be it once more repeated, would be an impossible task.¹

¹ Cf. for example the courts with leet jurisdiction enumerated in Farrer's *Lancaster Rolls for A.D. 1353-4*, p. xlii.

CHAPTER XXXIV.—DESCRIPTIVE ALPHABETICAL LIST OF TWO HUNDRED AND TWENTY COURTS LEET OR GROUPS OF COURTS LEET.¹

The following are the courts with leet jurisdiction whose survival into modern times in the form of "courts leet" I have up to the present been able to trace :—

Aberavon (Glam.).

A court leet was held annually on the first Monday after Michaelmas. In 1835 its functions were merely elective; the jury named three persons, from whom the constable of the castle selected the portreeve; the other two of the three were the aldermen for the year.²

Abingdon (Oxford)

at one time had a court leet. The earliest reference to it appears to be made in the charter of incorporation, dated 1555. This and other notes concerning the court are contained in *The Municipal Chronicles of Abingdon*, published by Mr. Bromley Challenor, the present town clerk, in 1898. In the charter of 1555 the sheriff of the county and other royal officers are expressly forbidden to "intermeddle themselves to have or keep leet or view of frankpledge or court of view of frankpledge of laws within the borough aforesaid" (p. 19). The charge to the grand jury at the court leet is given by Mr. Challenor in an appendix (pp. xxv.-vi.), and it is followed by "An Abstract of the Articles to be given in charge to the Grand Jury to enquire of at the Leet and Laweday to be holden for the borough of Abingdon" (pp. xvii.-xxxi.). The *Mun. Corp. Rep.* (I. 4, § 15) mentions the court as existent in 1835.

Aldwick (Chichester).

The hundred and manor of Aldwick had a court leet, which was held annually down to 1884. In that year it was allowed to die out, for—writes Mr. W. B. B. Freeman, of Chichester, who was steward of the court at its last eleven meetings—"it was found it had become so obsolete that it was

¹ This chapter may be omitted by those who do not wish to study in detail modern survivals of mediæval leet jurisdiction. Of the courts, or groups of courts, dealt with in the following pages, some forty-four are in more or less active operation at the present day. See list given above, p. 6.

² *Mun. Corp. Rep.*, I., 166.

thought well to discontinue it." Mr. Freeman kindly sends me a copy of the record of the final session, November 4th, 1884. From that it appears that twelve "jurors for our Lady the Queen" were sworn. Before them came six tythingmen, representing respectively Aldwick, North Bersted, Nytimber, Bognor, South Mundham, and Crinisham, and concerning each the following entry was made:—"A. B., the tythingman, here comes with his tything and pays for a common fine 2/6 and says he has nothing to present, and the jury name A. B. tythingman for the year ensuing, who is chosen by the steward and being present is sworn accordingly." Beyond that, apparently, the only thing done was the appointment in a similar manner of two high constables, one for the Upper Half Hundred, one for the Lower Half Hundred.

Alnwick (Northumberland).

A court leet was held till the present Duke of Northumberland succeeded to the estates. See description in Tate's *History of Alnwick*. The *Mun. Corp. Rep.* (III., 1419) mentions the court as existent in 1835, and adds that it was a manorial court in which the corporation had no jurisdiction.

Altrincham (Cheshire)

in 1835 had a court leet, with two sessions annually. At the autumn court the officers for the year were chosen. As to the most important of them, the mayor, the custom was that the leet jurors should send three names to the steward, who selected one of the three.¹

Andover (Hants).

Alderman C. J. Phillips, kindly replying to my enquiries, writes: "By charter 41 Eliz. (21st May, 1599) there was granted to the bailiff, good men and burgesses of the borough of Andevor and their successors that thereafter for ever they have and hold every year a view of frankpledge with a leet and lawday of all and singular the inhabitants and resiants within the same borough or town and hundred of Andevor aforesaid, and within the liberties, jurisdictions and precincts of the same borough or town and hundred, and all things which to leets, lawdays, or views of frankpledge appertain or belong, to be holden every year twice in the year in manner and form as theretofore they had been accustomed to be held." Further, he

¹ *Mun. Corp. Rep.*, IV., 2578-5.

adds, that "according to Mr. W. H. W. Titheridge's catalogue (1837) one bundle of the Andover Corporation records contained, *inter alia*, a book of the proceedings of the court leet and quarter sessions from 8th Oct., 1657, to 8th May, 1690, and the following book from 9th Oct., 1690, to 13th July, 1693." It would appear that the court leet was entirely merged and lost in the quarter sessions.¹

Arundel (Sussex)

was empowered to hold a court leet by charter 28 Eliz. (1586).

Ashburton (Devon).

The court leet is still both existent and active. Mr. P. F. S. Amery, of Ashburton, writes: "The court leet, with view of frankpledge, is held annually by the lord of the borough in November, and has been from time out of mind, I believe without any intermission from the Saxon days. At this court the frankpledge list of registered freeholders is called, but usually only those summoned on the juries and officers attend. The leet jury, which consists of twenty-three freeholders, is selected by the steward; they are sworn by the same oath as the shire grand jury at the assizes." At this yearly session are elected the portreeve (still the official head of the borough), the bailiff, two bread-weighers, and two beer-tasters. Deaths of freeholders and alienations of freeholds are registered—though no business these of a court leet. Finally, "any other matters of importance relating to the borough" are dealt with.

Ashton-under-Lyne (Lancashire).

Few, if any, of existing courts leet exercise at the present day so much effective authority as "the court leet, view of frankpledge and court baron" of the Earl of Stamford's manor of Ashton-under-Lyne. The court meets twice a year, in April and November, under the presidency of the steward of the manor, to consider questions in dispute as to retaining walls and fences, roads, water courses and boundaries, and also to hear complaints made by tenants and others. The jury numbers fourteen. It appoints no less than twenty-five officers, whose duties, however, are nominal only; one of them bears the curious title of "mayor of the manor." But, further, at every court, presentments of nuisances are made, and it is in connection with these that the court retains its ancient importance. The presentments

¹ Cf. also *Mun. Corp. Rep.*, II., 1086,

are carefully considered and offenders are amerced, even when they are such powerful corporations as the borough council itself, or the Lancashire and Yorkshire railway company. What is yet more remarkable is that the amercements are invariably paid. What would happen if they were not paid is not very clear; but the steward says that he would not hesitate to issue a warrant and distrain. The uncertainty that hangs over the ultimate sanction of leet jurisdiction at the present day no doubt keeps the jurors within the limits of a strict justice and moderation, for which they have secured a high reputation.¹

Axbridge (Somerset)

had a court leet till about 1831, when it was discontinued owing to a dispute between the corporation and the commissioners of sewers.²

Bamburgh (Northumberland)

had a court leet existent in 1893,³ but beyond that fact I have no information.

Banbury (Oxford)

had a court leet in 1835. It was held once a year, viz., at Michaelmas, by the corporation, as lord of the manor. Officers were sworn in and other merely formal business performed.⁴

Barnard Castle (Durham).

A court leet, with which was associated a court baron, existed "until the coming into force of the *County Courts Act* for the collection of small debts"; which act, in destroying the court baron, destroyed the court leet too. Till then the joint court was held annually, within one month of Michaelmas, by the steward of the Duke of Cleveland, lord of the manor. The oldest extant records are dated 1637, but references are found to courts of earlier years.⁵

Basingstoke Hants)

A court leet existed, says the present town clerk, Mr. J. A. Kingdon, "for at least six hundred years up to the early part of

¹ Cf. Butterworth's *History of Ashton-under-Lyne*, Webb's *English Local Government* (Manor and Borough), Book III., Chap. II., and for an account of the proceedings of the court in 1844 the *First Report of the Royal Commission of Inquiry into the State of Large Towns and Populous Districts*, Vol. II., pp. 71-73.

² *Mun. Corp. Rep.*, II., 1096.

³ *Bateson Northumberland*, I., 149.

⁴ *Mun. Corp. Rep.*, I., 12, § 34.

⁵ See extracts from court rolls in the *Teesdale Mercury*, 1885-86.

the nineteenth century." The *Mun. Corp. Rep.* (II., 1102) speaks of it as extant in 1835, though its business was "reduced to the appointment of tithingmen and the return of resiants within the respective [19] tithings."

Baigent and Millard's *History of Basingstoke* (pp. 247-356) gives exceedingly full extracts from the court rolls 1390-1588, as well as a brief description of the court's jurisdiction. It appears that the court leet or lawday was held twice a year. One session, known as "The Turn of Hock," took place on the third Saturday after Easter, the other, called "The Turn of St. Martin," on the first Saturday after the eleventh of November.

Bath (Somerset)

had in 1835 a court leet held by the town clerk, as steward, on behalf of the corporation, which was lord of the manor.¹

Beaumaris (Anglesey)

had a grant of view of frankpledge by a charter of 4 Eliz. (1562). The court is mentioned in the *Mun. Corp. Rep.* of 1835 (IV., 2587), and one gathers that it still existed at the time when the commissioners made their enquiries. The present town clerk, Mr. Rees Roberts, has, however, never heard of it.

Bedford.

The following information comes from a pamphlet issued in 1876, entitled "*Observations on the Schedule of the Records and other Documents of the Corporation of Bedford*, by T. W. Pearse, town clerk:—"The proceedings of the court leet and the court baron have not been recorded separately. There are entries of the proceedings of the courts from 1558 to 1687. The courts were doubtless held after the latter date; indeed, it is stated that the earliest roll of the quit rents, of the date 1681, was confirmed at courts baron, held in 1696 and 1698, but there is no record of the proceedings later than 1687, except such as may be collected from numerous detached papers, generally without date, being presentments of leet juries, and containing other matters relating to the courts. The 'constitutions' or 'statutes' for the government of the borough were made at the court leet. Many of these are recorded in the 'Black Book.' For watching and other purposes under the cognizance of the court leet the town was divided into twelve wards, *i.e.*, the East Ward, the West Ward, the Mill Lane Ward, the Saint

¹ *Mun. Corp. Rep.*, II., 1117.

Cuthbert Ward, the Saint Peter Ward, the Well Street Ward, the Saint Lloyds Ward, the Prebend Ward, the Potter Street Ward, the Saint John's Ward, the Cauldwell Street Ward, and the High Street Ward."

The *Mun. Corp. Rep.* (IV., 2104) mentions a grant of view of frankpledge by Richard II. (1396), and remarks (IV., 2116) that in 1835 the court met twice a year, and that it was composed wholly of common-council men.

Berkeley (Gloucestershire).

The Berkeley courts are of peculiar interest, for until quite recent times, viz., till 1900, they remained the most perfect relic in the whole of England of that complex system of jurisdiction within jurisdiction—leet within tourn—which had been characteristic of the middle ages.

(1) First and foremost there was the court leet or law day of "the hundred and honour of Berkeley." This was probably a great hundred court or "sheriff's tourn," which, having passed into private hands and become the court of an honour, escaped the destruction of time and the drastic legislation of the *Sheriffs Act* of 1887,¹ and survived until the other day. It was held twice a year; it drew its jury (which numbered 30 in 1733, 42 in 1734) from some twenty different manors within the precincts of its jurisdiction: it received presentments, appointed officers, recited Acts of Parliament (as though they were not binding on the people of the honour until they had been read in the hearing of their representatives), and exercised active administrative control. Only in 1900 was it discontinued by Lord Fitzhardinge, the present Lord of Berkeley. For many years previous the only business done had been the appointing of haywards or pinders, whose functions had been gradually taken over by the county police, until it had ceased to be worth while to summon some fifty persons from the widely scattered parts of the hundred merely to elect them.

(2) Within the "hundred and honour of Berkeley" there were two boroughs, viz., Berkeley and Wotton-under-Edge, and each of these had its "court leet with view of frankpledge and court baron." These courts continued to exist till 1884, when they came to an end in consequence of the passing of the *Act for the Abolition of Small Boroughs*. Prior to that date, for a long time their chief work had been the election of the respective mayors.²

¹ 50-51 Vict., cap. 58, § 18 (4).

² Webb *English Local Gov. (Manor and Borough)* Book III., Ch. II.

(3) The leets of honours and boroughs were apparently quite separate and distinct; there was nothing of the nature of an appellate jurisdiction in the one over the other.

Berwick-upon-Tweed

had in 1835 a court leet held twice a year.¹

Beverley (Yorkshire)

had a court leet in virtue of a charter of date 1385.² In 1536 a dispute arose between the archbishop of York and the burgesses of Beverley as to whose court it was. At length an agreement was arrived at which, on the one hand, admitted that "the said most reverende Father in God . . . hathe had and ought to have, and also tyme out of mynde of man have used to keepe and have within the said towne of Beverley his . . . courte called the shirefes torne or court leete." But, on the other hand, the archbishop allowed to the town the right to elect "xii. governours," who were to present defaults and offences to the "lete courte or shiref his turne of the said archbushoppe holden in the said towne of Beverlaie before his stuard or depute there."³ In 1835 the Municipal Corporation Commissioners reported (III., 1460) that "the manor of Beverley belongs to the corporation," and that "the mayor and aldermen hold the usual manor courts."

Bewdley (Worcester).

There is still extant a court called a court leet; but its steward, Mr. Stanley Hemingway, town clerk of Bewdley, tells me that the powers of the court "seem always to have been confined to the transference of property." He adds: "The court rolls date from the time of Charles II., previous to which period the manor was under the jurisdiction of the Marches of Wales, with the records of which those of the manor anterior to the time named are probably bound up."

The right to hold a court leet is recognised in charters of 3 Jac. I. (1606) and 7 Anne (1709).⁴

¹ *Mun. Corp. Rep.*, III., 1445.

² Merewether and Stephens *History of Boroughs*, p. 747.

³ Leach *Beverley Town Documents* (Selden Soc.), p. xxxvi. and pp. 66 and 70. See also *Hist. MSS. Com. Report on the Manuscripts of the Corporation of Beverley*, p. 53, for this "Indenture 5 Nov. 28 Hen. viii. (1536) between Edward, Archbishop of York and chief lord of the town of Beverley of the one party, and Robert Creke, Esq., etc., etc., on tooder partle."

⁴ *Mun. Corp. Rep.*, III., 1773.

Bideford (Devon).

The manor of Bideford is co-extensive with the borough and also the parish of Bideford. The mayor, aldermen, and burgesses of the borough purchased the manorial properties and rights from the Cleveland family in 1881. The "court leet and view of frankpledge, together with court baron" of the manor, still meets annually on the Saturday in Easter week. A jury is impaneled and a tithingman appointed, whose duty it is to collect the "chief rents" of the manor. Further, the court still elects two waywardens, and (what is very remarkable) presents the "people's churchwarden" for the ensuing year for duty at the parish church.¹

Birmingham (Warwick)

had a court leet, most of the available information concerning which is to be found in J. T. Bunce's *History of the Corporation of Birmingham* (Vol. I., Ch. I.), and the works referred to therein. It appears that "no meeting of the leet has been held since 1854," but that "the court may still be summoned." Its rolls go back no farther than to 1779, but there are many evidences of its earlier activity. The title of the court in 1779 ran: "Manor of Birmingham. The Court Leet or View of Frankpledge with the Court Baron of the Right Hon. Sarah, Lady Archer, etc., etc., Oct. 20." The nature and duties of the court at that period are fully described in a rare and important tract (largely reprinted by Bunce, pp. 5-11), entitled *The Duty of the Respective Officers appointed by the Court Leet in the Manor of Birmingham*, by Thomas Lee, 1789. This tract contains, *inter alia*, the list of the officers² and the lengthy charge delivered by the steward to the jurors who chose them.

Bunce mentions one curious custom connected with the Birmingham leet in the eighteenth century. "By an unwritten but unbroken rule," he says, "the high bailiff was a churchman and the low bailiff a nonconformist"—a term equivalent in that town, at that period, to Unitarian. Since "the low bailiff selected the jury of the court leet," while the jury in turn elected the low bailiff and the other officers, it is obvious that, in spite of the superior dignity of the Trinitarian high bailiff, all effective power lay with the Unitarians, who were in fact dominant in

¹ For the information summarised above I am indebted to Mr. W. B. Seldon, town clerk of the borough, and steward of the manor.

² The officers were: high bailiff, low bailiff, constables, headboroughs (or secondary constables), ale conners, flesh conners, searchers and sealers of leather.

the borough. In 1722, and again in 1792, the Established Church made vigorous efforts to break the vicious circle of the supremacy of Dissent, but in neither case were the efforts successful.¹

Bishop's Castle (Salop)

had in 1835 a court leet belonging to Earl Powis, "but nuisances, etc., committed within the borough were considered *not* to be presented at this court, the burgesses conceiving themselves to be lords of the borough."²

Blandford Forum (Dorset)

had in 1835 a court leet which was the sole court then held in the borough. The steward or the recorder presided, and what he presided over was primarily a dinner, for the provision of which four guineas of public money were allowed.³

Bodmin (Cornwall)

had received by charter the right to hold a court with view of frankpledge. This court was still in existence in 1835; it met twice a year and, *inter alia*, appointed the four constables of the borough.⁴

Bossiney (Cornwall)

in 1835 had a court leet, held twice a year (April and October) by the mayor. The "grand jury" of the leet was nominated by two "elizers" or electors, one of whom was appointed by the mayor, the other by the town clerk.⁵

Boston (Lincolnshire)

had (under a charter of 37 Henry VIII.) a court leet, which in 1835 was active, though it was held only once a year, whereas the charter authorised two sessions. "The leet jury," says the *Mun. Corp. Rep.* (IV., 2155), "sometimes present nuisances, and indictments founded on these presentments are brought forward at the quarter sessions."

Brackley (Northants)

had in 1835 a court leet held once a year on the first Monday after Michaelmas for the purpose of elections.⁶

¹ In the first case proceedings were taken in the court of King's Bench of the nature of a *quo warranto* respecting the right of the low bailiff, as against the steward, to appoint the jurors. *Of. Bunce*, pp. 18-20.

² *Mun. Corp. Rep.*, IV., 2598.

³ *Mun. Corp. Rep.*, II., 1131.

⁴ *Mun. Corp. Rep.*, I., 445.

⁵ *Mun. Corp. Rep.*, I., 453.

⁶ *Mun. Corp. Rep.*, I., 28.

Bradford (Yorks).

The court leet still meets once a year. A full descriptive account of it is to be found in *The Bradford Antiquary*, Vol. II., pp. 189-91. The charge to the jury is there given *in extenso*, and it is interesting to note that the articles are almost verbally the same as those in use in Southampton. "During the year 1844," proceeds the writer of the report, Mr. W. Cudworth, "the opinion of counsel was taken as to the question of continuing the presentment of constables owing to the passing of the *Peel Police Act*, also as to the duties to be performed by the court leet constables. The opinion elicited was that the appointments should continue, and, as to the duties, that the leet constables should perform all duties previously performed before the passing of the Act, excepting those connected with the prevention or punishment of crime." The writer later adds: "Many of the powers of the court leet were abolished by the *County Court Act* of 1867." If this be true, it is obvious that the court exercised the "baronial" power of dealing with petty debts, and to that extent was not a mere court leet.

Brading (Isle of Wight).

According to the commissioners of 1835 there was at that date an existent and effective court leet—the only other court in the little town being a decadent court of pie-powder. The court leet ceased to meet July 7th, 1885. The latest governing functions it performed were the collecting of the fee-farm and town rents, and the supervision of the paving, lighting, and water supply. Its duties were taken up by a newly constituted town trust. The extant records date back to the year 1550—in that respect, by a curious coincidence, resembling the Southampton records.¹

Brecon (Brecknock)

had a court leet, which in 1835 held one session a year (within a month after Michaelmas), at which formal presentments of nuisances were made and lists of persons suitable for the office of constable were laid before the steward, who therefrom selected two for each ward.² The court died out in 1887. Its extant records cover only the fifty-six years prior to its extinction (1831-87).

¹ I am indebted for this information to Mr. W. Riddick, the last steward of the court leet.

² *Mun. Corp. Rep.*, I., 181.

Bridgetown (Totnes, Devon).

"The court leet for the manor of Bridgetown, in the borough of Totnes, meets annually in November. Old customs are maintained, but the duties are obsolete. The present court book commences in 1789."

Bridport (Dorset)

in 1835 had a court, at which "the usual business of a court leet was transacted." It was held once a year, in October, before the bailiffs, who selected the jurors. The town clerk was steward. It retained one notable relic of antiquity: the resiants roll of all male persons between the ages of 16 and 60 was called, and those not present were actually fined one penny. There are among the borough records rolls of various courts—sessions court, court of record, court of the clerk, of the market, and, finally, court leet and view of frankpledge. Some of these rolls are said to date from 1272, but which of them we are not told.

Brighton (Sussex).

Until its incorporation in 1854, Brighton, or Brighthelmston, lay within the jurisdiction of the "leet or lawday with view of frankpledge" for the hundred of Whalesbone or Wellesbourne. The court met each year on Easter Tuesday, and in it "the constable of Brighthelmston was always chosen by and out of the 'twelve' of the town," as also were other officials for the hundred as a whole and its constituent parts. After the incorporation of the borough the court met once only, viz., on Easter Tuesday, 1855; its work was done.²

Broughton (near Manchester).

The manor of Broughton lay within the hundred of Salford (q.v.), but it had a court leet of its own which met once a year, shortly after Easter, until the year 1840 or thereabouts. In the eighteenth century there had been a Michaelmas court as well. The manuscript records extend from 1708-1840; an account, with extracts, is being prepared for publication by the Chetham Society under the editorship of Mr. H. T. Crofton.

Buckingham

in 1553 had "a steward given to it for the purpose of presiding at the courts, particularly the court leet, which (*sic.*) was one of

¹ Letter from Rev. T. H. Elliott, Totnes. See also below, under *Totnes*.

² Cf. *History of Brighthelmston*, by J. A. Erredge (1862), pp. 22, 23.

his peculiar functions.”¹ In 1835 the commissioners merely reported that “the bailiff and steward are authorised to hold a court leet.”² We are left to assume that they actually did hold it.

Burton-on-Trent (Stafford and Derby)

in 1835 had a court leet which met once a year. Its chief work was the appointment of officers, viz. for Burton itself three constables and six assistants called “deciners,” and, for various neighbouring hamlets, constables.³ “The court ceased to meet at some date, which I have not been able to determine precisely, prior to 1866.

Bury St. Edmunds (Suffolk)

had a court leet which was recognised by charter (12 Jac. I). In 1835 it met once a year only, but—a noteworthy fact—if its business was not then concluded it was adjourned from time to time until the agenda sheet was clear. Not merely, then, was it existent, it was also active; it performed “the ordinary functions of a court of this nature . . . in a useful and efficient manner.”⁴

Caerwys (Flint)

had in 1835 a court leet which exercised sole jurisdiction in the town.⁵

Callington (Cornwall)

was, prior to the passing of the *Municipal Corporations Act*, 1835, governed by a portreeve appointed in the court leet.⁶

Calne (Wilts)

had a court leet held before the steward of the Marquis of Lansdowne, lord of the manor. Its rolls are extant only for the late and limited period Oct. 13th, 1810—Aug. 1st, 1853; since the latter date it has not been held.⁷

¹ Merewether and Stephens *History of Boroughs*, 1199.

² *Mun. Corp. Rep.*, I., 29, § 16.

³ *Mun. Corp. Rep.*, III., 1785.

⁴ *Mun. Corp. Rep.*, IV., 2171 and 2177.

⁵ *Mun. Corp. Rep.*, IV., 2610.

⁶ Merewether and Stephens *History of Boroughs*, 1348.

⁷ Merewether and Stephens *History of Boroughs*, 2193; *Mun. Corp. Rep.*, II., 1233.

Cambridge

had, until the passing of the *Municipal Corporations Act*, a "leet of annoyance" whose chief function at the time of its supersession was the appointment of constables for the borough.¹

Camelford (Cornwall)

had in 1835 a court leet which met twice a year, under the presidency of the mayor. The jury presented the "free burgesses, but did not elect any officers."²

Canterbury

in 1835 presented an example of leet jurisdiction in several particulars remarkable. First, every ward had its own court leet, held once a year, and presided over by the two aldermen of the ward; secondly, the jurors frequently numbered so large a number as forty; thirdly, they actually went round to inspect nuisances in all wards save one; finally, to one or other of the leets all the householders were summoned.³

Cardiff

was the head town of the Welsh Marcher Lordship of Glamorgan. As such it received its charters not from the king, but from its own lords. Thus, under a charter granted by Hugh le Despenser in 1340 it received (or was confirmed in) the right to hold a hundred court, which should hear all pleas and complaints as well of hue and cry and of bloodshed as of trespass and debt. This hundred court appears, then, as an undifferentiated court, with, at any rate, some fragments of leet jurisdiction. In 1478 Richard of Gloucester, in another charter, recognised the right of the citizens to hold "the royal & hundred courts." Merewether and Stephens consider the "royal" courts to have been courts leet.⁴

Carlisle

was allowed by charter of 13 Charles I. to have a court leet; but there is no evidence that any such court was ever held.⁵

Carmarthen

once had a court with view of frankpledge, but by 1835 it had "fallen into total disuse."⁶

¹ *Mun. Corp. Rep.*, IV., 2192-3.

² *Mun. Corp. Rep.*, II., 689, 700.

³ *Mun. Corp. Rep.*, III., 1469.

⁴ *Mun. Corp. Rep.*, I., 473.

⁵ *History of Boroughs*, p. 1929.

⁶ *Mun. Corp. Rep.*, I., 210.

Carnarvon.

Mr. R. O. Roberts, the town clerk, writes that "there is considerable doubt as to whether or not there was a court leet" in Carnarvon. He adds that at one time "several counsels' opinions were sought on the matter," the records of which are deposited in his office.

Castle Rising (Norfolk).

In 1835 the mayor of the borough was sworn in at the court leet of the manor.¹

Cefn Llys (Radnor)

was in 1835 a manor of Sir John Walsh. It had a court baron and court leet with view of frankpledge. At the court the steward of the lord of the manor nominated bailiff, constable, and burgesses, who were formally presented by the jury and sworn.²

Chatteris (Cambridge)

has a court leet of the manorial type still extant. In 1869 the Bishop of Ely, the lord of the manor, transferred his interests to twenty-four local trustees, who, in their corporate capacity, assumed the lordship. In order to maintain the ancient manorial rights, the twenty-four, on St. Matthias's day (February 24th) every year, transform themselves into leet jurors, and hold a court leet, to which all residents are summoned. Absentees are fined; officers are appointed—a crier, a constable, fen-recves, pinders, bread-weighers, ale-tasters—all unpaid and apparently sinecure. The court leet records go back to February 24th, 1748.³

Chipping Norton (Oxford).

The *Municipal Corporations Report* (I., 35) says that "the charter gave power to hold a court leet within the borough twice a year," but that in 1835 this court was obsolete, "having been superseded by the court leet of the manor." Mr. Adolphus Ballard, in his scholarly *Notes on the History of Chipping Norton* (1893) says of this manorial court that it was a combined court baron and court leet, and he adds: "but although there was technically this [previously described] difference between the two courts, yet in the eighteenth century their functions were

¹ *Mun. Corp. Rep.*, IV., 2211.

² *Mun. Corp. Rep.*, I., 373.

³ Letter from Alan. O. Margotta, Esq., the present steward.

practically indistinguishable" (p. 25). There was only one jury, and only one charge (see Appendix B., pp. 36-7). "After the charge, the bailiff asked if any man could give evidence on any of the things above noticed; and if he could do so he was sworn and his evidence was taken. Then the court was adjourned till the afternoon, and in the meantime the jury went round the town and considered if there were any nuisances to report or presentments to make. . . . When they assembled in the afternoon they made their presentments" (pp. 25-6). The rolls of this combined court, and therefore, presumably, the court itself, ceased in 1846.

Chipping Sodbury (Gloucester)

had in 1835 a court leet which met once a year, in October.¹

Chipping Wycombe (Bucks)

had in 1835 "a court leet and view of frankpledge held before the mayor, late mayor, and such of the aldermen as had been mayors."²

Christchurch (Hants)

had at one time a court leet held before the steward of the lord of the manor twice a year, within a month of Easter and Michaelmas respectively.³

Cirencester (Gloucestershire).

Mr. R. Ellett, clerk to the justices of the Cirencester petty sessional division, writes:—"There is a court leet for the manor and hundred of Cirencester. The courts were held annually until a few years ago, and would be held again if occasion arose. The functions exercised were for many years purely nominal." Merewether and Stephens say that in their day the steward of the manor appointed in the court two high constables and fourteen petty constables, *i.e.*, two for each of the seven wards of the borough.⁴

Clitheroe (Lancs.).

(1) The *borough* of Clitheroe, according to Merewether and Stephens, "had from time immemorial a court leet."⁵ It is referred to as existent in A.D. 1323-4 in the *Lancaster Court Rolls*, edited by Mr. William Farrer for the Chetham Society

¹ *Mun. Corp. Rep.*, I., 87.

² *Mun. Corp. Rep.*, II., 1356.

³ *Mun. Corp. Rep.*, I., 43.

⁴ *History of Boroughs*, p. 1281.

⁵ *History of Boroughs*, p. 1355. An attempt to destroy the court leet in 1694 is described, p. 1362.

(p. xiii.). It continued to meet twice a year—the present town clerk informs me—until the *Municipal Corporations Act* of 1835 came into force.

(2) The *honour* of Clitheroe in mediæval times included several other courts with coördinate leet jurisdiction. Concerning these courts, invaluable information is given in *The Court Rolls of the Honor of Clitheroe in the County of Lancaster*, edited by Mr. W. Farrer. It appears that “the honor of Clitheroe was that part of the great Lancastrian fief of the family of De Lacy which lay around the town and castle of Clitheroe, originally embracing the hundred of Blackburn alone, but afterwards including Bowland and the manors of Slaidburn, Tottington, and Bury” (p. v.). It passed from the De Lacy’s (by marriage) to Thomas of Lancaster; on the attainder of Thomas (1323) to the king; next by grant of Edward III. to Queen Isabella, afterwards to John of Gaunt, in whose hands it became a parcel of the Duchy of Lancaster. In 1662 it was conferred on General Monk, from whom it has been transmitted by regular descent to the present Lord Montagu of Beaulieu. Among the courts of the honour were—(a) the “great court,” called the sheriff’s tourn, held once a year by the sheriff of the county; (b) the “great leet court” of the wapentake or hundred of Blackburn, held twice a year; (c) the courts leet of the fee of Slaidburn, the fee of Tottington, and the forest of Bowland, each held once every six months; (d) halmotes for various manors or groups of manors.

It is the rolls of these halmotes (1377-1567) that are given in the first (and so far only) volume of Mr. Farrer’s publication, and it is the constitution and powers of these courts that deserve specially careful attention. Mr. Farrer says: “The halmote cannot be correctly described as either a court leet or a court baron. So far as the proceedings were of the nature of inquiry and presentment of matters affecting the peace and security of the community, the court was of the nature of a leet; and when the proceedings were of the nature of an inquiry and presentment of matters affecting the rights and prerogatives of the lord, it was of the nature of a court baron” (p. xi.). A detailed examination of the halmote rolls confirms this lucid and accurate statement; it reveals an undifferentiated court. On the one hand, there are entries of a leet character relating to such matters as affrays and bloodshed, rogues, stocks, games, encroachments, boundaries,

highways, bridges, pound-breach, butchers, tanners, brewers, fish, weights and measures, and hunting-dogs. On the other hand, inextricably mingled with them, are entries respecting suit and service, customs of the honour, enclosures, surcharging of the commons, use of the lord's mill.

Congleton (Cheshire),

like Clitheroe, was a parcel of the Duchy of Lancaster. It was one of the numerous townships in the extensive honour of Halton, but, "by old grant," it had a court leet of its own—"visus franciplegii cum curia leta"—which exempted its inhabitants from attendance at the Halton court leet. It was mentioned as existent by the commissioners of 1835, who remarked that it still presented nuisances.¹

Conway (Carnarvon)

had a court leet, so the town clerk tells me, which died out in 1768, leaving rolls for only the preceding twenty-five years.

Cornwall.

Leet jurisdiction was exercised by the Stannary courts at two specially full sessions, the one in the spring, the other in the autumn.² The charge of the steward at the leets is given in Pearce's *Laws of the Stannaries*, p. 152.

Coventry (Warwick).

The court leet in Coventry met annually within one month after Michaelmas. It was presided over by the town clerk, who acted as the deputy of the steward. The "grand inquest" consisted of some thirty persons, all of them ex-officials, chosen by the mayor and council. They in turn appointed the officers of the corporation and the constables of the wards. Every year a "leet-penny" was collected by the constables from every inhabitant who owed suit and service to the leet. It does not appear, however, that any option of attendance was afforded to those who wished to escape the fine.³ The court became extinct in 1834.

The leet records of Coventry are contained in two thick demi-folio volumes. The first one, covering the years 1420-1555, has just (1907) been issued by the Early English Text Society,

¹ *Mun. Corp. Rep.*, IV., 2653; Merewether and Stephens *History of Boroughs*, pp. 1340-43; Harleian MSS., 844., p. 24; Beaumont *Rolls of the Honour of Halton*, pp. 6, 7.

² Holdsworth *Hist. Eng. Law*, Vol. I., p. 59.

³ *Mun. Corp. Rep.*, III., 1798 and 1803.

under the editorship of Miss Mary Dormer Harris. The second one, which carries on the rolls from 1588 to 1834, is, and probably will long remain, in manuscript only. The court leet of Coventry was not like other courts leet. It is evident that it had become in course of time the governing body in the town. Miss Harris writes, in a pamphlet entitled *The MSS. Records of Coventry*: "In the records of the Coventry court the judicial element is almost entirely overlooked. . . . The commonest entry in the *Leet Book* takes the form of a regulation or by-law passed by the court. The court framed sanitary regulations . . . regulations for the carrying on of trade, for the building of houses, for the moral welfare of the citizens." But further than this, the *Leet Book*, in the hands of its compilers, became a chronicle of current events, local and national. Thus, concerning the period of the Wars of the Roses, when for a time Henry VI. and Queen Margaret made Coventry their headquarters, "allusions to mustering of troops, battles, treasons, councils, alternation of parties, and the like crowd the pages of the *Leet Book*." This takes us a long way from the changeless and, one might almost say, timeless monotony of the ordinary court leet roll, in which not the smallest trace of the political movements of the day can be detected. The *Leet Book* had little leet-like about it except the name.

The judicial proceedings of the leet were entered in entirely distinct *Frankpledge Rolls*, of which a few remain from the reigns of Richard II., Henry VI., Edward IV., Henry VII., Henry VIII., Elizabeth, and James I.¹

"When the corporation desired to make some change in the customs of the town, one of their number could 'sue for remedy by act of leet' . . . (but) we cannot tell—so meagre is our information concerning the presentment of offenders at the court leet—whether the men of Coventry used the court as an instrument for bringing their rulers to justice."²

Crickhowell and Tretower (Brecknock)

have courts leet which at the present day meet once every twelve months to transact all business connected with the manors, and more especially to safeguard the rights of the lord of the manors and the interests of the commoners. The rolls are extant from 1608 *ad nunc*.³

¹ For the above information I am greatly indebted to Miss Mary Dormer Harris and to Mr. George Sutton, town clerk.

² *Life in an Old English Town*, by Mary Dormer Harris, pp. 116, 117.

³ For this information I am indebted to Mr. R. H. A. Davies, steward of the manors. Cf. also *Mun. Corp. Rep.*, I., 226.

Cricklade (Wilts)

had a court leet. Merewether and Stephens mention that in 1776 the bailiff presided, and that he and the constables were chosen annually by the jury at the Michaelmas session.¹

Crondal (Hants)

had a court leet (held half-yearly by the steward of the prior of St. Swithun's, Winchester) which is known to us only through its ancient records. These have been admirably edited by Mr. F. J. Baigent for the Hampshire Record Society.² The earliest court-roll, of date 1281, reveals an undifferentiated court. Side by side occur such entries as: (a) "W. atte Wde dat domino 10/- pro fini unius messuagii et dimidiæ virgatæ terræ prius matris suæ," and (b) "R. de M. pro assisa cervisiæ fracta in misericordia 12d." The series of rolls extends from 1281 to 1761, and of this period of nearly half a millenium there are some 177 rolls extant (see detailed catalogue, pp. 486-96). The title of the court varied greatly during this long era. The following are interesting specimens:—

1281 : Hundredum de Termino Sancti Martini, etc.

1282 : Hundredum de Hock, etc.

1330 : Curia de Termino S. Martini, etc.

1382 : Curia Ballivi, etc.

1428 : Curia cum Visu Franciplegii, etc.

1481 : Visus franci plegii cum curia, etc.

1655 : The View of Franck pledges with the generall Court of the Mannor and Hundred of Crondall.

1686 : Curia Manerii, etc.

Derby

once had a court leet, says the town clerk in a letter; but no particulars are forthcoming.

Devizes (Wilts)

is said by the Municipal Corporations Commissioners to have had a court leet at one time, but at the date of their report it had fallen into disuse.³

¹ *History of Boroughs*, p. 2114.

² *A Collection of Records and Documents relating to the Hundred and Manor of Crondal in the County of Southampton*. Part I., 1891.

³ *Mun. Corp. Rep.*, II., 1286.

Dinas Mawddwy (Merioneth)

has a court leet which still meets every six months for the purpose of imposing amercements for encroachments on the wastes of the manor.¹

Doncaster (Yorkshire)

had in 1835 a court leet, held "for the choice of constables and presentment of nuisances."² It seems, however, to have died out immediately after that date: for, says Mr. C. W. Hatfield in his *Historical Notes on Doncaster*, "our court baron and court leet belong to the things of the past; they dropped into a state of decadence with the last town clerk under the ancient municipal régime." Some of the rolls of the court, ranging from 1454 to 1603, have been published by the corporation.

Dorchester (Oxford)

had a court leet, whose antiquity is established by a reference in a by-law dated 1414. In 1835 it was held annually before the mayor on the Monday after Michaelmas day, when it was adjourned to the day on which the Michaelmas sessions were held. The leet jury was generally identical in composition with the jury of the sessions.³ The court ceased to meet about 1881.⁴

Durham

was, throughout the middle ages, in a peculiar constitutional position. It was the seat of a prince-bishop of the truly feudal type, one who had his own system of courts in which the king's writ did not run.⁵ The ecclesiastical authorities had a "halmote," which corresponded roughly to the sheriff's tourn of the Kingdom of England. A very complete idea of its jurisdiction during the period 1296-1384 can be obtained from the *Halmota Prioratus Dunelmensis*, published by the Surtees Society in 1889. It appears that the court had jurisdiction over some thirty-five vills (see pp. xii, xiii for names). It went on circuit three times a year—*primus turnus*, *secundus turnus*, *tertius turnus*. "In some cases two or more of the vills appear to have been grouped into lordships, and within each lordship the court would sit, and thither those who owed suit and service would

¹ Letter from D. Oswald Davis, Esq., Steward.

² *Mun. Corp. Rep.*, III., 1501.

³ *Mun. Corp. Rep.*, II., 1277.

⁴ Letter from A. G. Symonds, Esq., town clerk.

⁵ Cf. Surtee's *History of the County of Durham*, 4 vols. *Metley Constit. Hist. of England*, pp. 305-6, and stat. 27 Hen. VIII., cap. 24.

be summoned" (p. xii.). The rolls reveal an undifferentiated court in which leet jurisdiction was combined with jurisdictions of very different kinds. The contents of the rolls, say the editors, may be broadly classified under the three heads: (1) demises of lands, (2) injunctions or by-laws, (3) penalties for various offences. These last relate quite indiscriminately to such "leet" offences as wounding, suit, brewing of beer, assize of ale and bread, unlawful games, and to such "baronial" offences as breaches of conditions of tenure, repairs of tenements, non-manuring of fields, cultivation of land out of proper course. (p. xiv.).

"In each vill jurors were sworn. . . . They appear to have been elected at one court to sit at the next." Their services "were in constant requisition not only in court, but out of court" (p. xxxii.).

The court held at Durham in 1805 is described in *Memorials of St. Giles, Durham*, edited by J. Barmby, 1896 (p. 7).

Dymock (Gloucester)

had, at any rate in the time of the Commonwealth, "lawdays and courts baron twice a year."¹

East Looe (Cornwall).

"In 1301 Henry de Bodrigan claimed view of frankpledge, ducking-stool, pillory, and assize of bread and beer" at East Looe; while in 1587 "the steward, the court, and the jury are all mentioned" in documents.² At the time of the visit of the commissioners of 1835 the court was held half-yearly, in conjunction with the sessions. It took cognisance of nuisances.³

Eastbourne (Sussex).

The present town of Eastbourne lies within the limits of the old hundred of Eastbourne, which in the eighteenth century had a court leet wherein were appointed annually constables for the hundred.⁴

Evesham (Worcester).

There was a court leet in Evesham at least as early as 1430, for in that year a dispute was settled there between the abbot and a certain William Botreaux concerning the right to set up

¹ Watkins *Treatise on Copyholds*, Vol. II., p. 230

² Merewether and Stephens *History of Boroughs*, pp. 1253 and 1253.

³ *Mun. Corp. Rep.*, I., 535.

⁴ Webb *English Local Government (Manor and Borough)*, Book III., Ch. II.

a mill.¹ Until the dissolution of the monasteries the abbot was lord of the manor of Evesham, and he appointed the steward, who presided over the court leet every Easter and every Michaelmas. After the dissolution the site of the abbey and the lordship of the manor were conferred upon Sir Thomas Hoby, who, and whose successors, accordingly claimed the right to hold the court. "In the 39th year of Queen Elizabeth a suit was instituted in the Court of Exchequer respecting the due holding of the court leet of this borough and the perquisites of the courts there."² The point at issue was whether the abbot or the king had been lord. The day went in favour of the claim of the abbot, then held by Sir Philip Hoby. In 1605, however, the borough secured from James I. a charter which, ignoring the claims of the manorial lord, granted a view of frankpledge to the mayor and corporation, and further appointed the mayor *ex officio* steward of the court leet which had formerly belonged to the abbey of Evesham. Hence arose a further conflict between borough corporation and manorial lord, which even so late as 1740 led to an action in Chancery. Nothing, however, was settled; but the general decadence of leet jurisdiction gradually rendered the point at issue of no importance. I have not been able to find out when the court, or courts, died out. As to the leet records, they seem to have vanished completely. The well-known local antiquary, Mr. E. A. B. Barnard, writes: "So far as I remember there is no allusion to the court in any of the existing documents of this borough. The *Minute Books* of the corporation are almost the only records in existence now, as successive town clerks delighted to have bonfires of old papers!"

Eye (Suffolk)

in 1835 had a court leet, held twice a year. The bailiff presided. Nuisances were presented. "Principal burgesses" who absented themselves were fined 5/-, common councilmen 2/6.³

Farnham (Surrey).

The hundred court of Farnham "apparently once had jurisdiction over the whole wide area of the Bishop of Winchester's domain."⁴ But how far it exercised leet jurisdiction it is difficult to say, for "there would appear to have been a court leet in connection with most of the manors."⁵

¹ May *History of Evesham*, p. 84.

² Morewether and Stephens *History of Boroughs*, pp. 1420-8.

³ *Mun. Corp. Rep.*, IV., 2230.

⁴ Webb *Eng. Local Govt. (Manor and Borough)*, Book III., Chap. II.

⁵ Letter from H. D. Porter, Esq., deputy-steward to the Ecclesiastical Commission.

Faversham (Kent)

had in 1835 a court leet, held twice a year in connection with the spring and autumn quarter sessions. It appointed various officers, viz., constable, borsholder, and presenters; but with that its functions ended.¹

Fishguard (Pembroke)

had a court leet in the seventeenth century. A survey made 1653 speaks of "a court leet and law daye holden twice every year at Michaelmas and May daye," and adds that "all freeholders and burgesses are sent to the said court and are amerlicable upon default." The court was still in existence in 1835.²

Flint

had in 1835 a court leet, which exercised sole jurisdiction within the borough. The commissioners say: "There is no criminal court except the leet, at which nuisances are presented."³ The records exist only for the brief period 1784-1815.

Fyling (Yorkshire). See Whitby.

Gateshead (Durham)

had in 1835 a court leet and court baron, held on behalf of the lord of the manor. All the "borough-holders" were required to attend under penalty of a fine. From them the jury was chosen.⁴

Glamorganshire (The Manors of the Marquis of Bute).

In Glamorganshire there are no less than nine extant courts leet held for groups of manors on the estate of the Marquis of Bute. The following notice, issued from the Bute Estate Office, Cardiff, on September 14th, 1907, looks to me so formidable that I despair of my ability to condense it, to expand it, to analyse it alphabetically, or even to supply it with commas. Hence I merely reprint it:—

Notice is Hereby Given that the Courts Leet of our Sovereign Lord the King and General Courts Baron of the Most Honourable John Marquis of Bute and Earl of Dumfries Baron Cardiff of Cardiff Castle, Lord of the several Manors hereinafter named will be holden at the several places and on the several Days following that is to say:—

¹ *Mun. Corp. Rep.*, II., 971.

² *Mun. Corp. Rep.*, IV., 2882.

³ *Mun. Corp. Rep.*, I., 229.

⁴ *Mun. Corp. Rep.*, III., 1527.

For the Manors of Senghenith *supra et sub* cum membris Whitchurch Rudry et Llanvedw at the Boar's Head Inn Caerphilly on *Wednesday* the 2nd day of October next at One o'clock in the Afternoon.

For the Manors of Lequeth Llandough Cogan Cosmeston and Walterstone at the Inn known as the Merry Harrier situate at Llandough on *Thursday* the 3rd day of October next at One o'clock in the Afternoon.

For the Manor of Glynrhondda at the Pandy Inn Pandy on *Friday* the 4th day of October next at Twelve o'clock at Noon.

For the Manor of Llanblethian at the Bear Inn situate at Cowbridge on *Monday* the 7th day of October next at Twelve o'clock at Noon.

For the Manors of Lystalybont Roath Dogfield Roath Tewkesbury Spittle Kibbor and Cardiff otherwise White Friars at the Angel Inn situate in the Parish of St. John the Baptist in the Town of Cardiff on *Tuesday* the 8th day of October next at One o'clock in the Afternoon.

For the Manors of Llanmaes Bedford and Malefant at the Dwelling House of John Williams Innkeeper situate at Llanmaes on *Wednesday* the 9th day of October next at Twelve o'clock at Noon.

For the Manors of Boverton Llantwit and Llantwit Rawley at the Dwelling House of Harriett Rees Innkeeper situate at Llantwit Major on *Wednesday* the 9th day of October next at One o'clock in the Afternoon.

For the Manor of Ruthin at the Inn known as the High Corner House situate at Llanharraon on *Thursday* the 10th day of October next at One o'clock in the Afternoon.

For the Manors of Miskin cum membris Pentirch and Clun at the Town Hall Llantrisant on *Friday* the 11th day of October next at One o'clock in the Afternoon.

When and where all persons who owe Suit and Service to the several Courts are required to attend and pay their respective quit and Chief Rents Fines and other payments due to the Lord of the several Manors.

Gloucester

had a "court leet, law day, and view of frankpledge." The corporation have in possession four manuscript books containing the rolls of the court from 1670 to 1819. The presentments relate to a variety of matters, such as street obstructions, non-repair of footways, the keeping open of shop without being a freeman.¹ The commissioners of 1835 report the court as "holden yet."²

¹ Cf. *Twelfth Report of Hist. MSS. Com.*, Appendix IX., p. 519.

² *Mun. Corp. Rep.*, I., 62.

Godmanchester (Huntingdon).

Mr. E. W. Hunnybun, solicitor, writes :—"The corporation of the borough of Godmanchester are the lords of the manor of Gumecester, otherwise Godmanchester. A court leet of the 'freemen' is held every year on Friday in Easter week. The mayor, whether a freeman or not, presides. The court leet is still in full force. It appoints the grasshirers or stewards of the commons, a pinder, and a swanherd. It deals with matters connected with the commons and swans. The minutes containing the accounts of the grasshirers are carefully kept. Fox's *History of Godmanchester* contains references to this court leet, but, as the writer was not a lawyer, and as the book was published about 70 years ago, it is not very reliable."¹

Gosport (Hants)

was noted in the case of *R. v. Bingham* as having a court leet in which the jury was impanelled by the bailiff.²

Grampound (Cornwall).

The case of *R. v. Nance* brought to light the fact that in 1758 the mayor of Grampound "ought to be presented at the next court leet before the jury of the court," which was held after Michaelmas, and there sworn.³

Great Cressingham (Norfolk)

had a court with leet jurisdiction, five of the rolls of which court, covering the period 1328-1584, have been published in an excellent edition by Rev. H. W. Chandler (1885). The title of the court was in 1328 "curia et leta," in 1489 "curia cum leta," in 1584 "leta cum curia generali." The presentments show conclusively, as one would expect, that the court was undifferentiated in its functions. Thus in the roll of 1328 we find consecutive entries to the effect (1) Of W. H. for leave to put corn growing in the lord's villenage out of villenage for a year, (2) Of W. F. because he drew blood from P. le K. One curious entry records the presentment (by whom?) of "all the homage because they refused to make the lord's hay" (p. 15). The presentments were commonly made by "a dozen of the steadiest and most respectable of the tenants of the manor, who in 1328 were called "capital plegg.""; in 1489 "capps. et inquis."; in 1490 "inquis." simply; in 1584 "cap^{les} pleg. lete" and "cap^{les} cum inquis."

¹ Cf. also *Mun. Corp. Rep.*, IV., 2236.

² 2 East, 308; *Scriven Copyhold*, II., 842-4.

³ Merewether and Stephens *History of Boroughs*, pp. 2063-4.

Greenham (Berks)

has a still existent and still active "court leet and court baron." It is presided over by the steward or deputy-steward of the lord of the manor. Its chief work seems to be to preserve inviolate "the ancient customs of the manor" relating to commons, pasturage, fishing, turf-cutting, and so forth. This present year (1907) it met on August 31st, and a very full and valuable account of its proceedings appeared in the *Newbury Weekly News* of Sept. 5th. There were twelve jurors; they made presentments and appointed a tithingman and two haywards.

Grimsby (Lincoln).

In 1835 a court leet was held once a year before the mayor, bailiffs, and deputy of the high steward. Till about 1815 there had been two sessions every year. It is notable that there were two distinct and separate juries; one sought out and presented nuisances and encroachments; the other elected constables.¹

Guildford (Surrey).

A court leet was held for the borough of Guildford down to the passing of the *Municipal Corporations Act* of 1835. It seems to have been held twice a year, but at unusual times, e.g., in 1777 on Jan. 13th and May 26th, and in 1778 on Jan. 12th and April 27th.² At the court were appointed constables, tithingmen, tasters of bread ale fish and flesh, and also a beadle. Presentments were made concerning public nuisances such as the wandering of hogs in the streets. The rolls of the court are at present in the keeping of the magistrate's clerk, Mr. Edwin Bonner, who sends me the above information.

Hackney (Middlesex).

A charter of 1551 granted leet jurisdiction in Hackney to Lord Wentworth.³

Halton (Cheshire).

The court leet for the manor of Halton in the county of Chester still meets regularly, though at the present day only once in three years. Formerly it used to be held every year in October or November. The deputy-steward of the court, Mr. Vere B. Davies, says: "It has no jurisdiction now. A jury is sworn and burley men and constables appointed, but they have

¹ *Mun. Corp. Rep.*, IV., 2253.

² Easter Sunday in 1777 was March 30th, and in 1778 was April 19th, so there is apparently no connection.

³ Merewether and Stephens *History of Boroughs*, p. 1149.

no powers, and the meeting of the court is for the sake of keeping up an old custom and an excuse for enjoying a dinner at the Halton Castle Hotel more than anything else."

This attenuated manorial leet would appear to be the shrunken relic of the great court of the honour of Halton,¹ which in mediæval and early modern times had within its jurisdiction eighty-seven townships. This honour of Halton was a part of the Duchy of Lancaster, and it comprised, among other manors, Runcorn, Moor, Thelwall, Over Whitley, Cogshall, Congleton, Widnes. It seems to have been divided into two portions for leet purposes: (1) the Halton leet, with seventy-five townships; (2) the Widnes leet, with twelve townships. As to the former, "the leets, though called Halton leets, and generally held at that place, were sometimes held at Runcorn, Moor, Thelwall, and Over Whitley." Moreover, one at least of the townships within the radius of the Halton leet, viz., Congleton (*q.v.*), had a leet of its own, which would exempt its inhabitants from attendance at the leet court of the honour.²

Haslemere (Surrey),

say Merewether and Stephens, once had a court leet at which "all the municipal officers were elected."³

Hastings (Sussex)

had in 1835 a hundred court "in the nature of a leet." It was held twice a year, and a few officers were in it chosen.⁴

Havering-atte-Bower (Essex)

in 1835 had an annual court leet held in conjunction with the Whitsuntide quarter sessions. The high steward presided; officers were elected; nuisances presented. "Before the passing of the *Inclosure Act* [about 1810] the leet jury sometimes granted small portions of the waste."⁵

Hereford

at one time had a court of view of frankpledge, which, however, in 1835, had fallen into disuse.⁶

¹ 21 Ed. III.: "Curia de Halton"; 16 Ed. IV.: "Turnus tent. apud Halton"; 14 Hen. VII.: "Visus Franci pleg. dñi de Halton"; 14 Car. II.: "Visus franci plegii cum curia leta dñi regis nunc honoris dñi ac feodi de Halton," etc.

² W. Beumont *An Account of the Rolls of the Honour of Halton*, pp. 1-10. I note in the rolls the following curious Latin terms:—*corvisarium indigestum*, a disorderly alehouse; *quadrum*, a tobacco quid; *spheristerum*, a bowling alley.

³ *History of Boroughs*, p. 1380.

⁴ *Mun. Corp. Rep.*, IV., 2880.

⁵ *Mun. Corp. Rep.*, II., 998-1000.

⁶ *Mun. Corp. Rep.*, I., 259.

Hungerford (Berks).

"There is a court leet held annually in Hungerford the first week after Easter. The records of its proceedings are filed each year, but the extent of its jurisdiction is very limited."¹ Further, "there is a survival of the essoin money at Hungerford, where a penny is collected from every householder who, warned to attend the Hocktide court, fails to put in a personal appearance."²

Huntingdon

had a court leet, concerning which Merewether and Stephens give the following items of information: that a charter of 1630 confirmed it (p. 1664); that in 1680 regulations were issued that "no man should be created a burgess but at a court leet" (p. 1714); and that "in 1810 at the court leet the list of the inhabitants was regularly called over, and those who did not answer to their names were fined; and the same list was continued till 1824" (p. 2186). The *Municipal Corporations Report* gives a supplementary note (IV., 2288-9): "The court leet has been discontinued since 1825. This seems to have been occasioned by a dispute between the ruling body of the corporation and the burgesses about some regulations concerning the stocking of the common."

Ilchester (Somerset)

once had a court leet, but it had been disused for 32 or 33 years when the Municipal Commissioners made their enquiries concerning it.³

Ipswich (Suffolk)

once had a court leet. Its extant rolls cover the period from Edward III. to Elizabeth.⁴ Merewether and Stephens think they can detect a reference to it in some ordinances of date 1321, which speak of four "great courts" every year whereunto all the commonalty owed suit.⁵ The *Municipal Corporations Report* says that "a court leet was formerly held by the sixteen head-boroughs, but in 1793 their functions were transferred by a local act to the paving commissioners."⁶

¹ Letter from Mr. H. D. W. Astley, of Hungerford.

² Letter from Mr. Walter Money, F.S.A., of Nowbury.

³ *Mun. Corp. Rep.*, II., 1290.

⁴ *Hist. MSS. Comm., Ninth Report*, Appendix I., p. 329.

⁵ Merewether and Stephens *History of Boroughs*, pp. 592-3.

⁶ *Mun. Corp. Rep.*, IV., 3317.

Kendal (Westmoreland)

had a court leet which was held once a year on the Monday after Michaelmas day before the recorder, as steward of the leet, or his deputy. The *Municipal Corporations Act*, 1835, finally abolished this court, but for many years previous to that act it had fallen into disuse.¹

Kilcott, Newent (Gloucestershire).

The *Worcester Journal* for July 30th, 1904, contained the following notice:—"The ancient manor of Kilcott, Newent, with the right of holding a court leet and view of frankpledge, has been acquired by Mr. Edward Conder, J.P., of Terry Bank, Kirkby Lonsdale, Westmoreland, and Colwall, Herefordshire. A perambulation of the manor will be made, and a court leet held at an early date. The last court was held by the late Mrs. Isabella Beal, of Bury Bar, Newent, as lady of the manor."

Mr. Edward Conder, Junior, F.S.A., kindly supplements this information by saying: "The manor of Kilcott possesses the rights of court leet, court baron, view of frankpledge, and free warren, by grant dated 1285. . . . The court leet is held early in October or November, but not every year. The next court will be held in October of this year (1907). Officers are appointed, and two commons and other wastes receive attention." The unprinted records of the court are kept at Mr. Conder's house, Conigree Court, Newent, Gloucestershire.

Kilgerran (Pem.)

had a half-yearly court leet. Its sessions were held near Easter and Michaelmas respectively, but the exact day was fixed on each occasion by the portreeve, who also selected the jury and presided at the court.² The court died out in 1890 in consequence of municipal changes effected in virtue of the *Corporations Act* of 1882.³

King's Lynn (Norfolk)

had a court leet held once a year (October 28th), under the presidency of the mayor. The jury consisted of twenty "headboroughs," two from each of the ten wards of the town, appointed by the aldermen of the respective wards. The "headboroughs" continued in office during the year, and their chief duty was "to inspect weights and measures and to look

¹ See *Annals of Kendal*.

² *Mun. Corp. Rep.*, I., 279-80.

³ Cf. *History of Kilgerran*, by J. M. Phillips.

into the wholesomeness of provisions," for which purposes they were "frequently, privately, and at uncertain periods warned to attend." At the annual meeting of the court "the 'head-boroughs' returned their verdict, the constables were sworn in, and the mayoress's pin money was ordered to be levied."¹

The leet rolls in possession of the corporation extend from 24 Ed. I. (1296) to 1871, when the court seems to have ceased to meet.² The court leet was the subject of dispute so long ago as 1347. It appears that the leet—a collection of profitable privileges—had been let out to farm by the lord of the manor to the people of the borough. After the lord's death, and during the minority of the heir, the bishop had purchased the farm from the borough. On coming of age, the heir, Adam de Cliffe, begged for restitution.³ In 1831 the court leet was described by the commissioners as still vigorous.⁴

Kingston-on-Thames (Surrey)

had in 1835 an effective court leet. It was held once a year, on Whit-Tuesday. Constables were elected, nuisances presented, and fines imposed, which were subsequently actually levied. This court manifests at least one notable peculiarity: "It appears by old entries in the court books that all presentments at the court leet are afeffered at the court baron."⁵

Knaresborough (Yorkshire).

There are still extant, though exercising but slight jurisdiction—(1) the court leet of the borough of Knaresborough, and (2) the forest courts leet for the Forest of Knaresborough, which is a parcel of the Duchy of Lancaster. Mr. G. L. Gomme, in his *Primitive Folkmoets*, 1880, says (p. 137): "The court of the Forest of Knaresborough is styled the sheriff's torne or great court leet, and is now held in the castle of Knaresborough twice a year."

Knole (Somerset).

In the parish of Long Sutton, near Somerton, in Somerset, is a hamlet called Knole, in which, I am told, there is a court leet still extant; but I have been unable to obtain detailed information about it.

¹ For the above particulars I am indebted to Mr. J. W. Woolstencroft, town clerk of King's Lynn.

² Cf. *Hist. MSS. Com., Eleventh Report*, Appendix III., p. 210, where, however, the earliest roll mentioned is that of 3 Ed. II.

³ *Rot. Parl.*, II., 207.

⁴ *Mun. Corp. Rep.*, IV., 2404. Cf. also Merewether and Stephens *History of Boroughs*, pp. 760-1.

⁵ *Mun. Corp. Rep.*, IV., 2900.

Lampeter (Cardigan)

had in 1835 a court leet which met twice a year. The steward of the lord of the manor presided. At the Michaelmas court the jury presented to the steward the persons chosen to be portreeve and beadle for the ensuing year, and the steward swore them in.¹ The court leet became extinct only in 1884, when a new charter of incorporation was granted to the borough.²

Lancashire.

A valuable table of the courts of the county of Lancashire during the period from the thirteenth to the sixteenth centuries is given in Mr. Farrer's *Lancaster Court Rolls* (Introduction, p. xiii.). It appears that there were—(1) the "county," that is, the court of the shire; (2) "wapentakes," or hundred courts of West Derby, Salford, Amounderness, and Lonsdale;³ (3) "leets" at Manchester, Warrington, Widnes, Newton-in-Makersfield, Penwortham, Clitheroe, Rochdale, Tottington, Garstang, Hornby, Muckland, Ulverston, and Dalton-in-Furness; (4) "hal-motes," some of which might have leet jurisdiction, in townships too numerous to mention; (5) "portmotes" in boroughs such as Salford; and (6) "woodmotes" for the chases.

Lancaster

presents a most interesting case. "Under a charter granted in 1193 by John, Count of Mortain, confirmed when he became king, the commonalty of the borough of Lancaster exercised the right to take amends of the assize of bread and ale broken, and to have pillory, tumbrel, infangenthef, and gallows."⁴ These privileges were attached to the borough court. Now the assize of bread and ale, and the right to have a pillory, were very generally associated with leet jurisdiction. But were they by themselves enough to constitute it? The problem is of course one for modern theorists alone. It would not have been so much as intelligible to King John and his contemporaries. The answer must be, *No*. The view of frankpledge must be looked upon as the essential test for the twelfth and thirteenth centuries, and this seems to have remained with the wapentake court of Lonsdale, itself held at Lancaster—tradition says, in the parish church.

¹ *Mun. Corp. Rep.*, I., 283.

² Letter from Mr. J. E. Lloyd, town clerk.

³ The Leyland "wapentake" had become absorbed into the barony of Penwortham.

⁴ Letter from Mr. W. Farrer, editor of the *Lancaster Rolls*.

Langport Eastover (Somerset)

was allowed, by a charter of 14 James I., to hold a court leet, but there appears to be no evidence that the privilege was ever exercised.¹

Launceston (Cornwall).

The borough of Launceston and the manor or honour of Dunhevet are co-terminus. The manor originally belonged to the crown, but—writes the learned librarian of Launceston, Mr. C. L. Hart Smith—"when the borough started its existence and the burgesses commenced paying fee farm rent to the crown, from that date did the lordship of the manor begin to run with them," or rather with their appointee, the headman or (later) mayor. "I find," he continues, "that as far back as I can go courts leet were held twice in each year for Dunhevet manor or honour . . . and they have not yet, as far as the administrative business of the manor is concerned, ceased to exist." The extant rolls of the court go back to the year 1566.

Leeds (Yorks)

has two manorial courts leet still extant. Mr. J. Cecil Atkinson, who is steward of both of them, kindly communicates the following valuable information:—"There are two courts leet held in Leeds, one for the manor of Leeds and the other for the manor of Leeds Kirkgate-cum-Holbeck. They are held annually within a month of Michaelmas, but the business has now become of a merely formal nature, and the courts are kept up only for purposes relating to copyholds, *e.g.*, making proclamations. We still appoint twenty-four constables at the Leeds manor court and two at the Leeds Kirkgate-cum-Holbeck court, but they no longer act as constables. The Leeds manor court is held at the Leeds town hall, but it has no relation to the Leeds civil authority. The Leeds Kirkgate-cum-Holbeck court is held at various places in the manor, in some public house or other. It is many years since the proceedings at the court leet were entered on the court rolls, which now relate only to the copyholds. I have no rolls of the Leeds manor earlier than 1790, and for the Leeds Kirkgate-cum-Holbeck than 1702."

Leicester

in mediæval times had a "portmanmoot" or borough court, an undifferentiated court which exercised (*inter alia*) leet jurisdiction. Some of the early rolls of this court, together with a good

¹ *Mun. Corp. Rep.*, II., 1297.

deal of scattered information concerning it, are to be found in the late Miss Mary Bateson's scholarly *Records of the Borough of Leicester*.¹ Thus a fragment of a portmanmoot roll for 1269-70 "consists of a list of persons who wage money for various offences, *e.g.*, bloodshed, hamsokyn, flogging, theft, debt, raising hue, false claim, withdrawal from plea, not coming to hear judgment," as well as not sending corn to the lord's mill, or bread to the lord's ovens, and so on.² This borough court met frequently; in fact, nearly every week.³ Apparently, at any and all of its sittings it could, and generally did, take cognisance of such "leet" offences as hue and cry (Vol. II., p. 175),⁴ scolding (*i.e.*, being a *communis conviciatrix*, Vol. II., p. 178), breach of the peace (*i.e.*, being a *perturbator pacis*, Vol. II., p. 178), use of false weights and measures (Vol. II., p. 178), assault (Vol. II., p. 180), rape (Vol. II., p. 180), burglary (Vol. II., p. 183), stabbing with a fork (Vol. II., p. 183) or a knife (Vol. II., p. 184). It is notable that all such offences are, so far as I can see, unlike other offences, invariably mentioned as presented by "franciplegii" or "juratores," although the number is by no means always so high as twelve. In 1379 the raising of the hue and cry with the consequent bloodletting (Vol. II., p. 175) was presented by six only. In 1443 a presentment of an affray was made by so few as four frankpledges (Vol. II., p. 254), and the offender was amerced.

But though there seems to be nothing in these records of judicial proceedings to indicate that of the numerous "portmanmoots" which sat every year one excelled another in glory, yet we learn from other documentary sources that twice a year a special view of frankpledge was held, as in the sheriff's tourn. Thus, says Miss Bateson (Vol. I., p. xxvi.), "the worth of the portmoot to the Earl [of Leicester] is stated in the *Inquest post Mortem* of 1327 to be £2, and there was a certain view twice a year worth £6/13/4. In 1361 the portmoot was reckoned at £8 and the view at £5/6/8, the assize of beer at Whitsuntide £5." The various "leet" franchises appear here to be closely

¹ *Records of the Borough of Leicester*, edited by Mary Bateson. Vol. I., 1103-1327 (1899); Vol. II., 1327-1509 (1901); Vol. III., 1509-1608 (1905).

² Vol. II., p. 382.

³ The rolls for the year 2-3 Ric. II. are complete. There are records of thirty-four sittings. Vol. II., pp. 171-185.

⁴ "Franciplegii quorum nomina sunt appensa [a slip with six names is stitched on to the roll] presentant super sacramentum suum quod Emma serviens R. W. juste levavit hutesium de R. B. . . . et J. B. injuste traxit sanguinem cum baculo de predicta Emma."

associated, and yet distinct.¹ Again, in or about 1463, the "Value of the Lord's Perquisites in Leicester" included:

(1) Perquisites of portmoots	...	...	£5	14	11
(2) " " views	...	...	6	1	6½
(3) Fines for neglect of views	...	...	3	15	4
(4) " " breaches of assize	...	...	4	2	9
(5) " " trespass against peace	.	.	6	1	8

Miss Bateson's third volume contains pleas of the Portmanmoot for 1572-3, 1584-5, 1585-6, and 1592-3. It also gives a charter of Queen Elizabeth (1589) which confirms to the mayor and burgesses the right "to keep all courts in English called 'le portmouthe courte' in the form aforesaid"; and it quotes from the chamberlain's account for 1599-1600 the item: "To the jurye for the leete for Belgrave gate . . . 5/-."

Lewes (Sussex)

had a court leet until its incorporation in 1881. The records of the court are deposited in the borough offices. A meagre description of its jurisdiction is given in Lee's *History of Lewes*, 1795.

Leyland (Lancashire)

has a court leet which is still held once a year on the last Monday in October. "The court used to have great powers in the sixteenth and seventeenth centuries, but at the present time its principal duties appear to be to see to the cleaning out of watercourses and the valuation of damages to crops."²

Lichfield (Stafford).

"The court of the view of frankpledge and court baron of the burgesses within the manor and city of Lichfield" has been held from time immemorial, and is still held, annually on the 23rd day of April, whence it is commonly known as "St. George's Court." The only business transacted at the present day is the appointment of two high constables (who audit the accounts of a local charitable trust), four commoners, and two pinners. In former days it used to swear in burgage holders, elect clerks of the market, present encroachments, etc., etc.³ The court was mentioned in a charter of 1547.⁴

¹ At a view of frankpledge held Dec. 15th, 1375, some 300 names were entered as "nomina pertinencia visui francplegiorum," and £2/4/4 was paid by those entering into frankpledge. Vol. II., p. 163.

² Letter from Mr. M. H. Wilkinson, surveyor, Leyland.

³ Letter from Mr. H. Russell, town clerk of Lichfield.

⁴ Merewether and Stephens *History of Boroughs*, p. 1154.

Lincoln

in 1835 had a court leet which was not only active at its half-yearly meetings, but which continued to exercise jurisdiction during most of the intervening periods by a series of adjournments, at each of which fresh presentments could be made. At the Michaelmas leet the mayor and chamberlains were sworn into office, and constables (who, however, had ceased to form a part of the effective police) were appointed.¹

Liskeard (Cornwall)

had in 1835 a court leet which, under a charter of 29 Eliz., continued to meet twice a year. Presentments had, however, ceased for several years to be made in it, and its sole business was connected with the appointment of officials. The court was held before the mayor, the deputy, and two capital burgesses.²

Litton (Presteign, Radnor)

has a court leet which still meets occasionally for the purpose of protecting the common rights. Its court rolls are extant from 1727 to the present day.³

Liverpool.

Leet jurisdiction in mediæval Liverpool was apparently attached to the portmoot court. As to this court, it may be noted, first, that a charter of 1229 empowered the inhabitants of Liverpool "to try and to settle in their own portmoot court all cases affecting rights or property in the borough, and relieved them from the burden of attending, as they had hitherto done, the hundred courts held at West Derby."⁴ It will be observed that there is no specific reference here to anything of the nature of leet jurisdiction. However, in the roll of 1324—the only roll of the mediæval court which survives—a distinction between "great courts" (*magnæ curiæ*), held once in six months, and ordinary courts, held every three weeks, is evident; while from later documents it becomes clear that at one at least, if not at both, of the "*magnæ curiæ*," all burgesses were required to be present.⁵ Here, pretty clearly, we have a court possessing the six-monthly view of frankpledge, and with it the other franchises which went to constitute leet jurisdiction.

¹ *Mun. Corp. Rep.*, IV., 2355.

² *Mun. Corp. Rep.*, I., 526-7.

³ Letter from Mr. F. L. Green, steward. *Cf. Mun. Corp. Rep.*, I., 373.

⁴ Ramsay Muir *History of Liverpool*, p. 20.

⁵ Muir and Platt *History of Municipal Government in Liverpool*, p. 26.

At first the work of this court was both administrative and judicial, but by the sixteenth century the judicial portmoot had become distinct and separate from the "general assembly of burgesses," which (meeting within the same week) exercised the powers of government. In the portmoot, presentments "were made by a jury of twelve members impanelled by the bailiff."¹

Before the close of the eighteenth century another change of a contrary kind had taken place—not differentiation, but absorption. The judicial portmoot had become merged in the quarter sessions of the justices of the peace. Hence the commissioners of 1835 report that "the only criminal court now held in Liverpool is that of the quarter sessions, in which the proceedings of the ancient court leet and portmote court are entirely merged. The style of these courts is still retained in entitling the proceedings of the quarter sessions, but no other trace of them remains."²

Llanelly (Carmarthen)

is a borough lying within the lordship of Kidwelly. In 1821, according to a deed communicated to me by Mr. H. W. Spowart, the present town clerk, the borough was governed "by a portreeve and burgesses elected by a jury sworn at a court leet held by the steward of the lord of the manor twice in every year." Mr. Spowart thinks it probable that this form of government came to an end in 1850, when a Local Board of Health was instituted under the *Public Health Act* of 1848.³

Llantrisant (Glamorgan)

has still operative a court leet, which has developed in a very curious and abnormal manner. It has become split up into what is now called the "baron court leet" and the "freemen's court leet." Down to 1883 these disintegrated fragments met separately twice a year, on the same day of the year on each occasion. Since 1883 the "baron court leet" has dropped its autumnal meeting and now holds only one session a year, in May, "for the admission of freemen and the transaction of any other business relating to the town trust."⁴ What happens at the two sessions of the "freemen's court leet" I have no idea.

¹ Ramsay Muir *History of Liverpool*, pp. 60, 90, 92, 108.

² *Mun. Corp. Rep.*, IV., 2713.

³ *Ct. Mun. Corp. Rep.*, I., 207.

⁴ Letter from Mr. W. J. Venables, clerk to the town trust. Cf. also *Mun. Corp. Rep.*, I., 313, and T. Morgan's *History of Llantrisant*.

London City.

The wardmotes of the city of London have already been alluded to, and their articles of enquiry summarised.¹ It will be sufficient, therefore, in this place to say that descriptions of their jurisdiction can be found in Stow's *Survey of the Cities of London and Westminster*, Norton's *Commentaries on the History, etc., of the City of London*, Pulling's *Laws, etc., of the City and Port of London*, Bohun's *Privilegia Londoniensis*, and in Riley's edition of the city's *Liber Albus*.

Longton (Lancashire)

has a manorial court leet, which still meets *pro forma*.

Lostwithiel (Cornwall)

was reported on by the commissioners of 1835 as follows: "Two courts leet are held in the year before the mayor and the justice and such of the capital burgesses [six in number] as may choose to attend; one [court leet] for the borough and the other for the maritime jurisdiction of Fowey."²

Louth (Lincoln)

had in the eighteenth and early nineteenth centuries a "court leet and manor court," in which presentments were made and small debts recovered. The civil jurisdiction of the court came to an end, however, on the passing of the *Local Act* of 47 Geo. III., which established a new procedure for the recovery of small debts; while the presentment business was exterminated by an *Improvement Act* of 6 Geo. IV. (1826).³

Ludlow (Salop)

had in 1835 a court leet and a court of record.⁴

Lymington (Hants)

presents a case of uncertainty. Merewether and Stephens, pressing their favourite theory, say of this little town: "Its presiding officer has long been called a mayor, but by what authority does not appear. He, no doubt, was the portreeve sworn in at the court leet of the borough."⁵ But even supposing that there ever was a portreeve in Lymington, and even suppos-

¹ See above, pp. 32 and 62-63.

² *Mun. Corp. Rep.*, I., 546.

³ *Mun. Corp. Rep.*, IV., 2376.

⁴ *Mun. Corp. Rep.*, II., 1309-10; and *Justice of the Peace* newspaper for May 25th, 1907 (p. 247).

⁵ Merewether and Stephens *History of Boroughs*, p. 1368.

ing that he was sworn in at a court leet, was it the court of the borough or the court of the Lymington hundred within which the borough was situated?

Lynn Regis. See King's Lynn.

Macclesfield (Cheshire).

The Earl of Derby is lord of "the liberty of the hundred of Macclesfield." Within the wide area of this honour there were as late as the seventeenth century at least three courts exercising, each within its own sphere, leet jurisdiction. These were, (1) the "court of great leet" of the hundred, apparently the counterpart of the sheriff's tourn, though it was held but once a year; (2) the "court of record for the manor and forest of Macclesfield," a forest court which once every six months became a court leet; (3) the "portmote" or "great leet of the borough" of Macclesfield (presided over by Lord Derby's deputy-steward), which, after a furious conflict with the municipality, ceased to exist in the Stuart period, because its functions had all been absorbed by the mayor and justices sitting in quarter sessions.¹

Maidstone (Kent)

had until 1838 a manorial court leet which met once a year, in October or November. Its principal business was the election of constables, and borsholders or tithingmen.²

Malden (Surrey)

at one time had a court of view of frankpledge, which, strange to say, owed its powers to a grant of the bishop of London. The bishop, however, made his grant under a licence of 5 Hen. IV., so that the theory of leet jurisdiction is not shaken.³

Manchester.

The present city of Manchester, which was but a town within a manor until 1846, had, until that date, a court leet very remarkable, in that, instead of declining in power, it went on increasing, as the manorial town developed in extent and population, until it became a supreme governing municipal authority of the highest importance. It met twice a year, and, in its later days,

¹ Cf. Webb *English Local Government (Manor and Borough)*, Book III., Ch. II.; also Earwaker *History of the Hundred of Macclesfield*; and Ormrod *History of Cheshire*.

² Letter from Mr. Valentine Munn, steward of the manor of Maidstone. But contrast the account given in *Mun. Corp. Rep.*, II., 764.

³ *Mun. Corp. Rep.*, IV., 2131.

being presided over by stewards of high legal standing, it confined itself to that business which legal theory said was proper to leets, more strictly than did most such courts. Every year, at the autumn session (held in October) it elected officers, whose number exceeds that found in any other case.¹ At the head of this leet system of administration was the boroughreeve (equal in rank to the present lord mayor), and next to him came the two constables, whose unpaid services were supplemented, from the middle of the eighteenth century, by those of a salaried deputy-constable (corresponding to the modern chief of the police).² The limitations which had been placed on the powers of leets at common law and by statute made the police jurisdiction of the Manchester court leet wholly inadequate to the requirements of the community at the beginning of the nineteenth century. The officers of the court were not justices of the peace, and the heavy work which in corporate boroughs fell upon the local justices had to be performed by the neighbouring county justices, who very devotedly rode into the town for the purpose. This state of affairs, however, having at length become intolerable, the community purchased in 1846 the rights of the lord of the manor, and secured a charter of incorporation. The last boroughreeve became the first mayor.

The records of the court go back to the year 1552. They have been printed *verbatim et literatim* in twelve magnificent vellum-bound royal-octavo volumes, under the editorship of the late Mr. J. P. Earwaker, by the Manchester Corporation. They, with the introduction and notes, form one of the most valuable of all our available authorities for leet jurisdiction in England.³

Concerning the origin and development of this Manchester court leet, much valuable information, the result of skilled and laborious research, has been embodied by Professor Tait in his *Mediæval Manchester and the Beginnings of Lancashire* (1904).

It appears that there were in the middle ages three separable and distinguishable, yet concentric, "Manchesters." (1) *The Barony of Manchester*, which "included lands in three of the [six] Lancashire hundreds—Salford, Leyland, and West Derby," though "the vast bulk of them lay in the first of these," *i.e.*, in

¹ In 1581 there were 71; in 1617, 100; in 1639, 106; in 1731, 123; in 1756, 138. By 1846, however, when the court was dissolved, the number had fallen back to 90.

² For the other officers see *Manchester Court Leet Records* *passim*, and for their duties a note in Vol. IX., Introduction, pp. v., vi.

³ Cf. also Webb *English Local Government (Manor and Borough)*, Book III., Ch. II.; Harland *Manchester Court Leet Records* (Chetham Society, Vols. 63 and 65); and Farrer *Lancaster Court Rolls 1323-4*, pp. vi. and xiii.

the Salford hundred (p. 15). (2) *The Manor of Manchester and its Members*, which latter “were defined to be Ashton-under-Lyne, Withington, Heaton Norris, Barton, Haughton, Heaton-with-Halliwell, Pilkington and their members” (p. 34). (3) *The Town of Manchester* in the strict and narrow sense, that is, Manchester alone without its members.

Now in and for all three there was one and the same court, which had some sort of jurisdiction over each, viz., “The Court of Manchester”; but the nature and extent of the jurisdiction varied greatly. (1) Over the wide-spreading barony it had a feudal, that is, civil, jurisdiction only. The court “was not a manorial court consisting of tenants of a single manor, but a court of great feudal tenants who held manors themselves” (p. 33). It was the head court of a hierarchy, and its chief business would be to receive the formal suit and service due from the lords of the dependant manors, or constables representing them.¹ But (2) over “The Manor of Manchester and its Members” this same court claimed ampler powers. In addition to its rights of civil jurisdiction, it had rights of “toll, team, infangthef and outfangthef, assize of bread and ale, etc.,” that is, rights of a criminal jurisdiction analogous to, but larger than, and generally inclusive of, the rights which later became “standardised” under the designation of leet jurisdiction (p. 34). It was, however, finally (3) over little beyond and outside of the town of Manchester that this criminal jurisdiction actually continued to be effective to so late a date as the beginning of the recorded era (1552). And even in Manchester itself it had established itself only after a severe conflict with a dangerous rival. For the people of Manchester town had in the thirteenth and fourteenth centuries tried to secure for Manchester the rank and privileges of a borough, and they had actually succeeded in obtaining the right to hold a portmoot in the town. However, for some reason or other, Manchester failed to obtain the requisite recognition, and “its failure to obtain recognition as a real borough arrested the growth of its portmoot. It [the portmoot] appears to have been still held towards the close of the fifteenth century, but by the middle of the next it had been amalgamated with the old court,” i.e., the “Court of Manchester” (p. 58).²

¹ Cf. *Manchester Court Leet Records*, IV., 213, etc., etc.

² For an interesting and very significant relic of this absorbed portmoot see *Manchester Court Leet Records* (1862), Vol. I., p. 75 and note. Cf. also Merewether and Stephens *History of Boroughs*, p. 542.

The question remains, How did this ancient baronial "Court of Manchester" become transmuted into the mere municipal "court leet" of the records? The answer is, first, by the dying away of its civil jurisdiction over the barony, which jurisdiction, never very lucrative, seems to have become extinct by the sixteenth century (p. 35); secondly, by the "standardising" of its criminal jurisdiction until it was reduced to the level of the normal leet jurisdiction of legal theory (p. 35).¹ In the light of these discoveries of Professor Tait, the study of the *Manchester Court Leet Records* becomes one of absorbing interest.

Maple Durham (Hants). See Petersfield.

Marlborough (Wilts)

in 1835 had a court leet which met twice in the year, viz., at the same time as the Ladyday and the Michaelmas quarter sessions.² Merewether and Stephens give a reference to it under date 1501.³

Melcombe Regis (Dorset). See Weymouth.

Monmouth.

The court leet of the manor of Monmouth continued to be held annually, mainly for the appointment of the parish constables, until, these appointments having been placed in other hands by the *Parish Constables Acts* of 1842 and 1844, it gradually died away, till it became extinct about 1850. The manor of Monmouth included, and was much more extensive than, the borough of Monmouth; the manor comprised seven parishes, only one and a half of which came within the limits of the borough. The two were, and still are, entirely separate.⁴

Myton (Yorks). See Tupcoates-cum-Myton.

Nantwich (Cheshire).

The manor of Nantwich had a court leet, which continued to exist until the establishment of the county courts, 1846. The court met twice yearly, once within three weeks of March 25th,

¹ "We may mention that the name 'court leet,' by which its two great annual meetings were known from the sixteenth century onwards, does not occur in any of the mediæval references to it. . . . The barons of Manchester, who enjoyed franchises more comprehensive and of older date, did not claim their police jurisdiction under this name. In the sixteenth century, however, when the higher franchises were obsolete, and the public work done by seigniorial courts had become standardised, they fell in with the general usage, and the official title of their court in its two great annual meetings was '*curia cum visu franciplegii*,' while the meetings themselves were referred to as *lects*." Tait's *Manchester*, p. 35.

² *Mun. Corp. Rep.*, I., 85.

³ *History of Boroughs*, p. 1067.

⁴ For the above information I am indebted to Mr. W. C. Williams, steward of the manor.

and once within three weeks of Sept. 29th. It appointed various officials, among whom were "rulers of waling," or inspectors of the saltworks, "heath-keepers," who had charge of a tract of common land called Beam Heath, "cavelookers," or market inspectors, "firelookers," "channel-lookers," as well as the more familiar constables, bailiffs, and ale-tasters. A long series of the rolls of the court are preserved in the Wilbraham collection at Delamere House, Northwich.¹

Newbury (Berkshire)

had a court leet till 1878. Its records extend from 1640 to the date of its dissolution. They still remain unprinted, but copious extracts from the earlier ones, together with valuable information concerning the court, are to be found in Mr. Walter Money's *History of Newbury* (1887). In 1643, it appears, the title of the court ran: "Manerium de Newbury in Com. Berk. Visus Franci Pleg. Domini Regis cum Curia Baron. Major. Aldermen et Burg. de Newbury prædicti," etc., etc. The first presentment for this year is of some 250 persons who "are resiants within the precinct of the mannor aforesaid and hath this day made default in not appearinge. Ideo quilibet eorum est in m'ia 2^l." The second presentment is of certain persons, beginning with the dean and canons of Windsor, who "are free suitors within the mannor aforesaid and have this day made default in not appearing at the court baron, therefore every of them is amerced 4^l." (pp. 255-8). These presentments throw interesting light on the question of the freesuitors in Southampton. It may be noted, too, that a "list of *freeholders* within the borough" of date 1655 includes some of the 1643 *freesuitors* (p. 289).

Mr. Money supplements his book in a letter full of antiquarian interest, in which he writes: "The Newbury court leet journals are extant from 1640, with a slight gap here and there, up to about the year 1878, when the boundaries of the borough were enlarged, after which time the court leet jury was not summoned." He then goes on to mention three further points of interest connected with the court. First, one of the duties of the court was to beat the bounds, during the course of which beating the 104th Psalm was sung on "Burial Hill" (reminiscent of the battle of 1643), the boys were bumped on what is hence called "Bumper's Hill," while the *Old Hundredth* and the

¹ For the above information I am indebted to Mr. A. E. Whittingham, solicitor, of Nantwich. Cf. also Hall's *History of Nantwich*, 1883.

National Anthem marked the end of the perambulation. Secondly, after the conclusion of the business of the court, a dinner was held, at which the novices on the jury had to provide champagne or submit to a penance known as "shoeing of the colts." Thirdly, "the journals of the court leet proved of very great service in a case, heard before Judge Lushington at Newbury in 1888, respecting the lammas lands, in which . . . the evidence of these records resulted in a verdict for the townsmen with costs on the higher scale."

The *Municipal Corporations Report* says of the court in 1835: "Courts leet are holden by the corporation as lords of the manor of Newbury concurrently with the Easter and Michaelmas sessions, at which the constables are chosen and sworn, and other inferior officers are appointed."¹

Newcastle-on-Tyne (Northumberland)

would seem to have had a court leet, for it is mentioned in a *Quo Warranto* of 1629 as one of the matters of enquiry.²

Newcastle-under-Lyme (Staffordshire)

had a court leet till about eighty years ago.³

Newport (Isle of Wight)

had an active court leet in 1835. It was summoned to meet on the days of the Easter and Michaelmas quarter sessions. All residents were expected to attend or to pay one penny fine. The jury made presentments and searched for defective weights and measures. The fines which they imposed were paid to the corporation, and in case of resistance were levied by distress: in 1832 they amounted to £1/11/0.⁴ The rolls of the "court leet and lawday" are extant, in nine volumes, for the period 1620-1822.

Newport (Pem.)

is an "unreformed" borough, in which the ancient court leet still exists and still performs some of its ancient functions. It meets *four* times a year, viz., on September 29th and (probably by adjournment) November 10th, and again on May 10th and (probably once more by adjournment) June 24th. Once a year,

¹ *Mun. Corp. Rep.*, I., 91.

² Merewether and Stephens *History of Boroughs*, 1860.

³ Letter from Mr. Joseph Griffiths, town clerk.

⁴ *Mun. Corp. Rep.*, II., 782.

amid its other business, it selects three candidates for the mayoralty, and the names of these three are, in the old style, submitted to the Lord Marcher, who makes the final choice. Mr. D. Davies, steward of the barony of Kernes and town clerk of Newport (to whom I am indebted for the above information), says that "the court rolls are extant from the reign of King John to the present time." Any local court rolls of King John's time should prove to be an immense treasure to antiquarians, who at present are acquainted with none earlier than Henry III.'s reign.¹

Norwich

presents an example of leet jurisdiction which is of peculiar interest to students of local constitutional history. In the thirteenth century, whence the oldest extant records date, the term "leet" was used in Norwich as the name of the divisions of the city. These divisions corresponded to the "wards" of other cities and boroughs, and, in fact, themselves acquired the name of wards by the year 1404.² There were in Norwich four geographical "leets"—the leet of Conesford, the leet of Mancroft, the leet of Wymer or Westwyk, and the leet over the water—and these four, together with two private fees, made up the hundred of Norwich.³ The leets or wards were in their turn split up into ten or eleven sub-leets, each of which consisted of about twelve tithings. Each leet had its court, over which, in succession, the city bailiffs presided, and in which the presentments were made by the capital pledges of the tithings.⁴ There are extant, fortunately, no less than eight rolls of these early courts of the Norwich leets, and these have been edited with exemplary patience and skill by Rev. W. Hudson for the Selden Society.⁵

From their contents it is possible to obtain a singularly accurate and complete idea of what "leet jurisdiction" meant in Norwich in the time of Edward I. and his immediate successors. On the one hand, "murder, manslaughter, or death

¹ Cf. *Mun. Corp. Rep.*, I., 353, and Fenton's *History of Pembrokeshire*.

² *Records of the City of Norwich*, Vol. I., n. cxi.

³ See map *op. cit.* p. xxv.

⁴ Hudson *Leet Jurisdiction in Norwich*, p. xxvii. As to these capital pledges, Mr. Hudson comes to the conclusions (1) that it was necessary for at least twelve presenters to agree in the presentment of an offence [Was this the case with the minor offences?]; (2) that they were held collectively responsible for a knowledge of all the offences committed in their district.

⁵ They are for the years 1288, 1289, 1290, 1291, 1293, 1307 (?), 1375, 1391. The same eight, together with a leet roll for 1551, a roll of the sheriff's tourn for 1678, and a roll of the quest of wards for 1694, have been re-published in Vol. I. of the *Records of the City of Norwich*.

by misfortune did *not* come under the cognisance of the court" (p. xxxiv.) ; but, on the other hand, theft *did* ; it " was always presented and occasionally dealt with by amercement" (p. xxxv.).¹ For the rest, the leets dealt with such familiar offences as nuisances, defective weights and measures, sale of unwholesome food, blood-drawing, wrongful raising of hue and cry, being out of tithing, not coming to leet, perprestures, forestalling, breach of assizes of bread and ale, breaches of the customs of the city. The offenders were amerced, and the amercements were affeered ; but it remains uncertain how far the money was actually levied. In 1289 the amount of the affeered amercements was £72/18/10, while the amount accounted for by the collectors was £17/0/2—a result, remarks Mr. Hudson, that " can hardly be called satisfactory " (p. xl). Cases of pardon, or excuse from payment, are very numerous. Some are excused " per baillivos," others " ad instantiam " of leading citizens, others again " quia causa non est vera," which suggests some appellate and revising authority (pp. xli.-xliii.).

In 1404 the city of Norwich was raised to the rank and dignity of a county with a sheriff of its own. This city sheriff began to hold his half-yearly tourns, at which presentments were made by a jury chosen by the sheriff from the four wards (as they were then called) indifferently. Under the rivalry of this great leet court of the county of the city, the ancient leet courts of the wards died away. The leet jurisdiction of the city tourn lingered till 1835, at which date the commissioners reported that " the leet performs the duties of inspectors of weights and measures, and receives fines on the conviction of persons using defective weights, etc."² But Mr. Hudson tells us in his introduction to the *Records of the City of Norwich* (p. cxl.) that the " leet " at this date consisted merely of four unsalaried officials, who, in lieu of wages, got what they could from the prosecution of offenders.

Nottingham

at one time had within its borders an effective leet jurisdiction, exercised by what was called the " Mickleton Jury," powerful enough to call even the corporation to order.³ In 1835 this leet

¹ " Thefts were presented, and if the amount stolen was small they were punished by amercement, otherwise they were reserved for a higher court. If the thief was caught with the stolen goods and was presented at the time, he might be hanged by the citizens on their own authority."—*Records of the City of Norwich*, Vol. I., p. cxxxvii.

² *Mun. Corp. Rep.*, IV., 2466.

³ *Records of Nottingham*, Vol. III., p. 364.

court met twice a year, when the jury perambulated the boundary of the manor, presented nuisances and encroachments, and imposed fines thereon.¹

At the present day "the court leet has not ceased to exist, but is caused to assemble only when any matter requiring its attention presents itself. The last meeting was held on October 21st, 1880. Evidence of the existence of the 'Mickleton Jury,' later known as the court leet, is found in the records of the borough as early as 1308."²

Oxford University.

In a charter of 14 Henry VIII. (1523) "the view of frankpledge within the precinct of the University is spoken of for the first time, and power is given to the chancellor to make precepts and writs and do all the acts which belong to a view of frankpledge."³

Pamber (Hants).

Mr. G. L. Gomme, in his book on *Primitive Folkmoets*, which was published in 1880, says (p. 122): "The court leet holden annually for the manor of Pamber, near Basingstoke, in Hampshire, is opened *sub dio* in a small piece of ground called 'Lady Mead' (a corruption of Lawday Mead), which belongs to the tithing man for the year."

As to the present day, however, I am assured by Miss Florence Davidson, of Silchester, who has made a careful study of the antiquities of the neighbourhood, that "the court leet is not held now, nor has been for a long time." Miss Davidson, further, kindly supplies the following note: "Hazlitt, in his *Land Tenures*, describes how this ancient court leet for the manor of Pamber was held in the open air at Lady Mede, a name derived from Law Day Mede, or meadow, after which all went into the inn to transact the business of the day. This marked a survival of the ancient moots of Anglo-Saxon times, which were all held in the open air. The late Mr. T. W. Shore says that at this court leet the people had the right to elect annually a bailiff or lord of the manor who could hunt and hawk by right as far as Windsor Forest, and to whom all stray cattle belonged, this being evidently a most ancient custom. Hazlitt, again, says that the proceedings of this court leet were

¹ *Mun. Corp. Rep.*, III., 1994.

² Letter of Mr. Samuel G. Johnson, town clerk.

³ Merewether and Stephens *History of Boroughs*, p. 1122.

recorded on a piece of wood called a tally, 3 feet long by $1\frac{1}{2}$ inches broad, something like those used in the court of the Exchequer centuries ago. These wooden records were kept till worm eaten and decayed. He adds that he saw a tally for 1745, and that one of these records was produced in a law suit in Winchester, and accepted as evidence. Pamber provided the last example of an elective lordship of a manor."

Penton (Hants).

At this little village, situated near Andover, a manorial court leet is still held *pro forma* every alternate year.

Penwortham (Lancashire)

has a manorial court leet which continues to meet once a year, but "the only function that it now performs is that of receiving presentments on the subject of ditches in need of scouring, and of making orders for the same to be done."¹ The court is referred to by Mr. Farrer in his *Lancaster Rolls* as among the leet courts of the Lancastrian estates, 1323-4 (p. xiii.), and the perquisites of the court at that date are enumerated in the same volume (pp. 36-48).

Peterborough (Northants and Hunt.)

had in the fifteenth century, at any rate, a court leet belonging to the abbot. This is evidenced by a most interesting pair of documents which the late Miss Mary Bateson published in the *English Historical Review* a few years ago.² One of these documents is the official parchment record of the court written in Latin. The other is a paper containing the actual presentments of the jury in English. "If," says Miss Bateson, "the paper and the parchment be compared, it will be seen that the clerk's fair Latin copy is not that absolutely faithful record of all that happened in the local court which we are apt to assume it to be." Of the ten presentments of the jurors, only five are entered at all, while even in these the bold and strong English of the paper is very different in tone from the clerkly Latin version. Concerning this court I have obtained no further information.

Petersfield (Hants)

is a borough that grew up within the manor of Maple Durham, one of the manors of the great honour of Gloucester, which

¹ Letter from Messrs. Houghton, Myers, and Reveley, Preston.

² *The English and the Latin versions of a Peterborough Court Leet, 1461* (*English Historical Review*, Vol. XIX., pp. 524-8).

passed into the hands of King John in virtue of his first marriage.¹ Its charters did not give it complete judicial and administrative independence, and until the passing of the Act of 1835 it remained to a large extent subject to the jurisdiction of the manorial court leet.² So late as 1823 a serious conflict took place between the municipal and manorial authorities respecting the appointment of the bailiff of the town, the powers of the steward of the leet, and the mode of selecting the jurors.³ It was held to be good by custom—though contrary to the general practice of courts leet—that the steward should nominate the jurors, who in turn elected the bailiff or mayor of the borough.

The Act of 1835 of course put an end to this matter of dispute; but the court leet of Maple Durham still meets, though at irregular intervals, for manorial business.

Pevensey (Sussex)

had a court leet which in 1506 was in dispute between the king (as Duke of Lancaster) and the Cinque Ports.⁴

Poole (Dorset),

according to a charter of 1568, had "the liberty of the view of frankpledge and all things which to such views belong." This charter, however, merely confirmed an earlier prescriptive court leet at which, *inter alia*, the mayor and other officers were elected. Hence it happened that when the late municipal corporation was suspended by Charles II. and James II. (1685-88), the court leet revived its older powers and resumed election.⁵

Portsmouth (Hants)

had in 1835 a court leet which met twice a year on the same days as the Easter and Michaelmas quarter sessions. The petty jury of the quarter sessions was sworn in as the leet jury, in which capacity its chief duty was to supervise weights and measures. It is a notable curiosity that though the court actually sat only twice a year, the form was observed of adjourning it from week to week, so that nominally it continued to re-assemble every Tuesday at the same time as the civil "court of record."⁶

¹ T. W. Shore *History of Hampshire*, p. 120.

² *Mun. Corp. Rep.*, II., 798.

³ *R. v. Joliffe*, 2 Barn. and Cres., 64. See also full summaries of the case in Scriven's *Copyhold*, pp. 814-6, and Elton and Mackay's *Copyhold*, p. 802. There is a further reference in Merewether and Stephens' *History of Boroughs*, p. 2222.

⁴ Kellway *Reports*, fol. 89b, and Merewether and Stephens *History of Boroughs*, p. 1079.

⁵ Merewether and Stephens *History of Boroughs*, pp. 1241-1247.

⁶ *Mun. Corp. Rep.*, II., 812. Cf. also Merewether and Stephens *History of Boroughs*, p. 1288, where reference to the court in a charter of 1600 is noted.

Presteign (Radnor). See Litton.

Preston (Lancs.).

Preston had a court leet which, it appears, continued to meet until 1835.¹ Its sessions took place twice a year at the usual times, viz., within a month after Easter and a month after Michaelmas. But, it is very interesting to note, there were regularly intermediate sessions or adjournments, which went under the name of "Inquests of Office"; in all respects they resembled the bi-annual courts leet.²

The records of the Preston court or courts are extant for the period 1653-1813. Extracts from them, with notes by Mr. Anthony Hewitson and an introduction by Mr. H. W. Clemesha, were published in 1905. Mr. Clemesha attributes the decay of the court to four causes: (1) the burden of attendance; (2) the unsatisfactory nature of the procedure; (3) the increase of the powers of the justices; (4) the abolition of the assizes of bread and ale, the laws respecting forestalling, the practice of archery, etc., etc.

Queensborough (Sheppey, Kent)

was incorporated in 1626. At that date "all its municipal business was transacted at a court leet," which, though with diminished administrative powers, survived the municipal transformation.³ In 1835 the court leet (together with a court baron) was held twice a year on the same days as the Easter and Michaelmas quarter sessions. The resiants—numbering only some 150—were called, and, as the remarkably heavy fine of 5/- was actually levied from defaulters, generally all of them attended. Until about 1820 the jurors had made it a practice to examine weights and measures on the court days, but from that date they had begun to take matters a little more easily; they were sworn for six months, and two or three of them went their rounds of inspection at leisure.⁴

Reading (Berks).

A "court leet and view of frankpledge" was formerly held in Reading under the ancient charters of the borough. It appears to have met generally once a year, either in September or October. It appointed constables and ale-tasters, and dealt with

¹ Whittle *History of the Borough of Preston*, p. 153.

² *Preston Court Leet Records*, p. viii.

³ Merewether and Stephens *History of Boroughs*, p. 1299.

⁴ *Mun. Corp. Rep.*, II., 835.

nuisances, defective weights and measures, etc. Its existence came to an end about 1810, when a local statute was passed conferring upon commissioners certain of the powers which had been exercised by the court. The records of the court exist in the town clerk's office, but they have never been printed.¹ The *Municipal Corporations Report*, 1835 (L, 114), gives the impression that the court had not, at any rate in theory, become recognised as defunct even at that date.²

Rhuddlan (Flint)

had in 1835 an annual court leet belonging to the lord of the manor. The report says: "The only court now held is that of the leet, and the only business transacted at it consists in the election of the bailiffs, the appointment of constables, and the presentment of nuisances—small fines being occasionally imposed and levied on such presentments."³

Richmond (Surrey)

"has a court leet," said Merewether and Stephens in 1835.⁴ To that terse *obiter dictum* I am able to add nothing.

Rochester (Kent)

in 1835 is reported to have had *two* courts leet. One was held in the Guildhall once a year, on the Monday after Michaelmas day, before the recorder or his deputy, the town clerk. The other was an open-air court, held upon the Boley Hill, a place within the city; but its meeting was "merely a matter of form."⁵ It is not easy to fix the relation between these two courts; but I would venture to suggest that the Boley Hill court is the relic of a very old court of the nature of a hundred court, and that it once exercised leet jurisdiction over the hundred (or even the lathe) in which the city of Rochester is placed. If this is so, the Guildhall court may be a city "portmoot," which up to the fifteenth century failed to secure the privilege of leet jurisdiction. Now Fisher's *History of Rochester* tells us that "under the charter of Edward IV., 1461, the mayor and citizens obtained a right to a view of frankpledge . . . in a certain place called the Boley within the suburbs of the

¹ I am indebted for this information to Mr. W. S. Clutterbuck, town clerk.

² For an account of an election dispute, 1716, in which the Reading court leet was mentioned, see Merewether and Stephens *History of Boroughs*, p. 163.

³ *Mun. Corp. Rep.*, IV., 2840.

⁴ *History of Boroughs*, p. 1386.

⁵ *Mun. Corp. Rep.*, II., 856-7.

city." May they not, then, have transferred the active leet jurisdiction to their portmoot, and have kept up the Boley Hill court merely as a form, and to prevent anyone else from claiming it, or from punishing them for its discontinuance? This is only a theory, but it may serve for the moment.¹

Ruthin (Denbigh)

in 1835 had a court leet which was remarkable; first, as being the sole criminal court in the borough; secondly, as having a couple of juries; thirdly, as having records of great antiquity. The *Municipal Corporations Report* says (IV., 2851): "The court leet for the presentment of nuisances, etc., is the only court of criminal jurisdiction in the borough, and this is held by the steward of the lordship, the borough jury taking cognisance of such matters *within* its precincts, the county jury *without* the same." The report adds (what is not easy to believe) that the rolls refer back certainly to 1245.²

Ruyton (Salop)

had in 1835 a court leet in which nuisances were presented, and in which also all officers for the borough and "the eleven towns" were appointed.³

St. Albans (Herts)

had a "court leet or view of frankpledge," which a charter of Edward VI., dated May 12th, 1553, says was to be held twice a year before the mayor and steward or the steward alone. The present town clerk (Mr. A. H. Debenham), who communicates the above fact, is unable to say when the court ceased, or whether any records of its proceedings exist. It lasted, however, till some date subsequent to 1835, for the report of that year mentions it as still meeting once every twelve months for the presentation of constables and the redress of nuisances.⁴

St. Clears (Carmarthen)

had in 1835 a court leet which was the governing body of the borough. All corporation business was transacted therein. There were two principal leets every year—one on the first Monday in May, the other on the first Monday after Michaelmas

¹ Rolls of the Rochester Portmote exist for various portions of the period 1501-1801, writes Mr. Apsley Kennebe, town clerk. Mr. G. L. Gomme attempts a solution of the Boley Hill problem in his *Village Community*, pp. 247-52.

² I have in vain tried to secure by correspondence verification of this statement, or to gain any further information respecting this court.

³ *Mun. Corp. Rep.*, IV., 2859.

⁴ *Mun. Corp. Rep.*, IV., 2925.

day: but each of these could be, and generally was, perpetuated by adjournments. The constitution was a close one, revolving in a vicious circle: the portreeves who presided were appointed by the jury, while the jury was selected by the portreeves.¹

Salford (Lancs.),

like Manchester, with which it is so closely associated, presents many points of interest. Just as there were in the middle ages three concentric Manchesters, so there were (and indeed still are) two concentric Salfords.

(1st) There was the *Hundred or Wapentake of Salford*, a part of the Duchy of Lancaster, covering some 320 square miles and comprising within its geographical boundaries nearly a hundred townships and manors, among which were Bolton, Bury, Manchester, Oldham, and Rochdale.² Some of these, however, though geographically included, were administratively independent, or semi-independent. Thus—apparently about 1086—Manchester and a huge slice of the south-eastern portion of the hundred had been carved off to form the nucleus of the barony of Manchester;³ but whether or not this part of the barony of Manchester was completely freed from all dependence on the Salford hundred was a matter of prolonged and acrimonious dispute.⁴ Similarly, and more certainly, in 1323-4 “the wapentake of Salford had no jurisdiction within the lordship of Rochdale.”⁵ Again, the De Lacy honour of Clitheroe included Bury, which geographically was within the Salford hundred.

Over such townships and manors, however, as had not secured exemption the Salford hundred court held sway. Like the baronial court of Manchester, this Salford court was the head of a feudal system; it claimed suit from the lords of manors, and the burgesses of townships, which themselves had courts of their own. For a hundred court, its existence—owing to the protecting care of the chancellors of the Duchy of Lancaster, and the Earls of Sefton, the hereditary stewards of the Duchy—was unwontedly prolonged. It survived well into the nineteenth century;⁶ and even when it died it left a direct descendant in the “court of record for the hundred of Salford,” from which

¹ *Mun. Corp. Rep.*, I., 377-8.

² See map in Farrer's *Lancashire Pipe Rolls*.

³ Tait *Manchester*, p. 10.

⁴ Tait *Manchester*, p. 59, and *Manchester Court Leet Records*, Vol. IV., pp. 126, 147, 172, 206.

⁵ Farrer *Lancaster Rolls*, p. vi.

⁶ Mr. H. T. Crofton in a letter expresses the opinion that it “probably came to an end about 1838.”

again was in part derived the still-flourishing joint court of record for Salford and Manchester established by Act of Parliament on July 13th, 1868.

Of the Salford hundred court and its jurisdiction but a few scattered traces remain. We have some notes concerning its ordinary three-weekly meetings in 1320.¹ Its perquisites for 1324-6 are given in Mr. Farrer's *Lancaster Rolls* (pp. 150-64). Its rolls for 1512-31 are among the documents of the Duchy of Lancaster in the Public Record Office. References to entries in its books for the years 1581-9 (relating to the dispute with Manchester) are made in a Manchester document dated 1654.² An account of its proceedings at the late date 1821 is to be found in Mr. H. T. Crofton's *History of Newton Chapelry* (Vol. III., pp. 354-7). In 1828 there were still forty manors and townships which sent representatives—constables or their deputies—to this court, which at that date seems to have been known as "the court leet, view of frankpledge, and court of record" of the hundred or wapentake of Salford.

(2nd) Included within the hundred of Salford, and indeed its nucleus, was the *Borough of Salford*, and this had its own court, its *portmote*, which exercised leet jurisdiction within the precincts of the borough. The records of this court for the period 1597-1669 came to light by a curious chance in 1894, at a private auction sale in Newark, when they were secured for the Salford corporation. They have been edited for the Chetham Society in two volumes by Mr. J. G. de T. Mandley.³ Some later rolls, beginning with that for 1735, have, strange to say, found their way into the hands of the Manchester corporation.⁴ The court ceased to meet in 1867.⁵

From Mr. Mandley's volumes the following points may be noted. First, that the expanded title of the court in 1598 was: "Salforde. Curia portmote burgi villæ et manerii reginæ de Salford prædicti tenta ibidem pro eadem regina coram Richardo Mollineux milite senescalo dictæ dominæ reginæ," etc. Secondly, that the jurors usually numbered twelve or thirteen, and that they "were liable to a penalty of 10/- each in case any of them

¹ H. T. Crofton *History of Stretford Chapelry*, Vol. II., p. 29; J. Harland *Mamecestre*, Vol. II., pp. 274, 286, 293, 333.

² *Manchester Court Leet Records*, Vol. IV., p. 126.

³ *The Portmote or Court Leet Records of the Borough or Town and Royal Manor of Salford*. New Series, Nos. 46 and 48 (1902).

⁴ The 1736 roll is entitled: "The Borough or Village of Salford. The Court Leet or Portmote held at Salford," etc., etc.

⁵ Letter from Mr. L. O. Evans, town clerk of Salford.

should 'reveale or utter any secrett or speech amongst them delivred being together'" (I., p. 208). Thirdly, that presentments "were generally founded on statements made on oath by the various officers of the court" (I., p. xx.). Fourthly, that among the suitors of the court (*burgenses et alii sectatores curiæ*) were a body of men, headed in 1598 by William Stanley, Earl of Derby, who seem closely to resemble the freesuitors of the Southampton court leet, *i.e.*, to have been nobles and gentlemen who owed suit and service to the Salford borough court, *not* because they were resiants (for such they were not), *not* because they were manorial lords within the Salford hundred (for that had nothing to do with the matter), but because they held lands or tenements in the borough by free burgage tenure (I., p. 4).

How far the Salford hundred court and the Salford portmote became associated and amalgamated in the course of their history—in the same way as the baronial court of Manchester and the portmote of Manchester became associated and amalgamated—I have not been able to ascertain. But I feel myself quite unable to follow Mr. Mandley when he treats the two as though they were, and had always been, one; as he does when he says (I., p. xvi.): "The Salford portmoot court was something more than a manorial court leet, for it was a hundred court possessing a wide and superior jurisdiction."¹

Salisbury (Wilts).

The town clerk tells me that an antiquary "who has for some time past been going through the papers in the Muniment Room, which have been allowed to get into a state of great confusion, reports that he can find no records of any courts leet." Yet that courts leet existed at one time is clearly indicated by the Commonwealth charter of the city of Salisbury (1656), which confirms to the "maior and cominaltie" of the city "all and all manner of courts, courts leets, veuies of franke pledge," etc., which (*inter alia*) had, apparently, been purchased in the year 1647 from "the late bishops of Sarum."²

¹ Professor Tait, of Manchester, tells me that "the rolls of 1512-31 contain separate and distinct records of the hundred court and the portmote, though the latter follow the former with nothing more than a new heading," and he thinks that "probably the courts were held close together and the steward was the same." There are evidences of distinctness, though close association, in 1654-6 and 1735-8. Apparently, however, when Balnes published his *Lancashire* in 1836 amalgamation had been accomplished, for Balnes says (II., 342) that "the borough reeve and other officers of Salford were elected by a jury summoned by the deputy-steward of the hundred at the king's Michaelmas leet of Salford hundred."

² This charter is printed in full in the *Camden Miscellany*, No. XI., published by the Royal Historical Society, 1907.

Savoy (Westminster).

The court leet for the manor and liberty of the Savoy shows one of the most interesting survivals of leet jurisdiction in England. The "precinct" of the Savoy itself is classed as one of the eleven "parishes" (though strictly speaking it is extra-parochial) which make up the modern city of Westminster. It is also a part of the Duchy of Lancaster. It consists of a small, but thickly-peopled, parcel of territory lying west of Temple Bar, round the site of the ancient palace of the Savoy in the Strand. Its history is notable. The name of "the Savoy" came to it from Peter, Earl of Savoy, one of the numerous and unpopular uncles of Henry III., who built there a religious house which was afterwards purchased by Henry's queen, Eleanor, for her son Edmund, Earl of Lancaster, who pulled the house down in order to build a residence. On Henry's death it descended to Blanche, his daughter, and through her to her husband, John of Gaunt. Hence its inclusion in the Duchy of Lancaster, inherited by Henry IV., and since his reign remaining in the hands of the crown.

The "manor and liberty of the Savoy" consists of four wards, each of which is represented by two burgesses nominated by the high steward, who, as president, sits with the high bailiff and burgesses in court leet once every year, within fourteen days after the quindenes of Easter—at the present day, by statute,¹ in St. Clement's Vestry Hall. At this meeting of the court a jury of sixteen is impanelled to hold office for a year. The jurors during their term of office keep their eye on nuisances, such as unsafe or disorderly houses, warn offenders, and, if the said offenders do not amend their dwellings or their ways, "present" them at the next meeting of the court, when they are liable to be amerced. Until about 1830 the court leet of the Savoy exercised much larger and wider governing powers than it does now; the development of the police, administrative, and judicial systems of Greater London has reduced it to comparative insignificance. At its meetings at the present day it chiefly concerns itself with maintaining the boundaries of the liberty, although quite recently fines have been inflicted for keeping disorderly houses, and nuisances reported. The boundary marks in process of time have come to be in strange situations. One is in a doorway in the Strand near the Law Courts; a second lies "at the back of Messrs. Child's Banking House over the Dust Bin"; a third falls in

¹ 24-25 Vict., c. 57.

the midst of the lawn of the Middle Temple; a fourth "in the flooring of the Scenery Department of the Lyceum Theatre."

The earliest known mention of the court occurs in an entry of 1399, but the older records are all lost. However, Joseph Ritson, author of the legal treatise on *The Jurisdiction of Courts Leet*, who was steward of the manor and liberty towards the close of the eighteenth century, published in 1789 a *Digest of the Proceedings of the Court Leet of the Manor and Liberty of the Savoy, 1682-1789*, from which much information concerning the earlier powers of the court can be drawn.¹ The "advertisement" of this rare volume runs: "All the books, rolls and other muniments of the Savoy Court anterior to the year 1683, are supposed to have perished in private hands. But there is sufficient evidence that the court has been regularly held ever since the accession of King Henry IV., anno 1399, as without doubt it was long before that period." The digest is in alphabetical form. It gives extracts from the leet rolls under heads:—aleconners, bailiff, butchers, commissioners of pavements, commissioners of sewers, constables, contempts, defaulters (in 1684: 196 resiants fined), disorderly houses, Essex stairs, gaming, forestalling, encroachments, inmates, jury, nuisances (19 sub-heads), pavement, pontherer, Savoy prison, scavengers, selling drink without licence, Strand bridge, Strand Lane stairs, watching and warding, water works, weights and measures, special entries. An appendix gives the oaths of officers and the bounds of the liberty.

The present volume of records, which has been in continuous use since 1785, is entitled "The Court-Book of the Manor and Liberty of the Savoy." Until less than half a century ago there were two sessions of the court every year, one in April or May, the other in October or November. The autumnal court, however, was held for the last time on November 4th, 1863. The following summary of the business of the court of the present year will serve to show the measure of vitality which the court retains: On April 23rd, 1907, (1) Mr. Fabian Ware was sworn as an assistant-burgess of the Savoy ward, (2) the jury presented the bounds, complained that they had difficulty in finding them, and asked for a map, (3) the jury strongly protested against the treatment which they received at the hands of the porter in charge of the Middle Temple gardens, for he had not allowed them to go through the Library gate to the Embankment, but

¹ *A Digest of the Proceedings of the Court Leet of the Manor and the Liberty of the Savoy, Parcel of the Duchy of Lancaster in the County of Middlesex, from the year 1682 to the present time, 1789.*

had made them return to the Strand whence they had entered, (4) they reported a complaint made to them concerning a hole in one of the roads, (5) the jury, sixteen in number, for the ensuing year was sworn.¹

Shaftesbury (Dorset)

is reported to have had a court leet in 1835, but no record of it appears to remain.²

Sheffield (Yorks).

Mr. Philip R. Wake, steward to his grace the Duke of Norfolk, lord of the manor of Sheffield, writes:—"A court leet is held for the manor of Sheffield from time to time. Its proper title is, 'The Court Leet and Court of Honor and Assembly Inquest of the Most Noble Henry, Duke of Norfolk, Lord of the Manor of Sheffield.' The court meets 'at the call of the steward.' It does not seem to have been held at all regularly; sometimes it would meet for two or three years in succession, and then there seems to have been a lapse of several years before the next court was summoned. The last occasion of its assembly was April 5th, 1899. Formerly the court used to appoint constables and assistant constables, and (up to 1879) a pinder, but latterly it seems to have appointed only inspectors of weights and measures, inspectors of the flesh market, inspectors of the fish market, inspectors of butter and eggs. These powers will, I think, now be all vested in the corporation of Sheffield, as a few years ago the Duke of Norfolk sold the freehold of all the markets, slaughter-houses, etc., to the Corporation, together with all his market rights." The records at present in the hands of the steward go back no further than April 21st, 1824; they are contained in a single large manuscript volume. There are, however, in the duke's possession, rolls which go back to 1496.

Mr. J. D. Leader, in his *Records of the Burgery of Sheffield* (1897), gives many notes, culled from earlier rolls and older writers, concerning the court in the days of its vigour. The most important and interesting of these is a quotation from a survey of the town made in 1637 by one John Harrison. It begins: "Within this manor is kept a court baron once every three months and a court leet twice every year, whereof the

¹ Cf. Carter *History of Legal Institutions*, Appendix I.; Webb *English Local Government (Manor and Borough)*, Book II., Chap. I.; *Report of the Westminster City Council, 1900-2*, pp. 12, 13; also the case of *R. v. Heaton*, 1787, as summarised in *Scriven Copyholds*, pp. 856-8. I am greatly indebted to the present steward, Mr. G. R. Askwith, for much valuable information, and for permission to consult the court-book.

² *Mun. Corp. Rep.*, II., 1354.

chiefest court is kept upon every Easter Tuesday (which is called Sembly Tuesday), at which there are six juries impanelled." The other quotations and references—which are numerous—in Mr. Leader's book relate to the period 1567-1701.

As to the name of the court, it is interesting to note that in the sixteenth century it was invariably called "The Sembly Quest"; it seems to have been only at the beginning of the Stuart period that such names as "court leet" and "great leet" came to be applied. Yet even then the old name lingered, e.g., 1718, "The Court Leet, Grand Court Baron, and Court of the Honour of Assembly Inquest."¹ Similarly, as to the jurors, in the Elizabethan records they are always spoken of as the "twelve men." Thus 1568, "the 12 mens verdyt"; 1570, "the 12 mens dyners."

Mr. Leader gives in full the roll of the court dated April 18th, 1609. All the entries are of the ordinary leet type except one, which runs: "No person shall make any wedding dinner for which he shall take above 6d. a person" (pp. 312-320).

Shrewsbury

had a court with leet jurisdiction, whose rolls exist for various years scattered over the long period 1272-1844.²

In 1504 there was a dispute in the Star Chamber, concerning the sphere of the authority of this court, between the bailiffs of Shrewsbury and the abbot. "Thaunswere off the bailieffes" states that "the said baileffes and commynalities have had a vew off frankpledge tyme out off mynd, amonges other off all the inhabitauntes dwellyng uppon the stanbruge in Shrewysbury forsaid which the seid abbot pretendeth to be within his libertie and fraunches."³

In 1835 the court was still held annually by the steward of the corporation. At its session constables were appointed and presentment of nuisances made.⁴ The court probably died out about the date at which the records cease, viz., 1844, but no positive information on this point is available.

Somerton (Oxfordshire)

had formerly a manorial court exercising leet jurisdiction. Seven of the rolls of this court for the period 1483-1573 have

¹ Leader *Sheffield*, p. xxxix.

² *Calendar of the Shrewsbury Records*, by W. G. D. Fletcher, F.S.A., and others, 1896.

³ I. B. Leadam *Select Cases in the Star Chamber*, p. 180.

⁴ *Mun. Corp. Rep.*, III., 2017.

been dealt with by Mr. A. Ballard in No. 50 of the *Oxfordshire Archæological Society's Transactions*. The earliest roll is entitled "Curia apud Somerton in die sabatti"; the second (1516), "Court with View of Frankpledge"; the sixth (1566), "View of Frankpledge with Court Baron." In the rolls the leet entries are kept separate from the entries of the court baron.

Somerton (Somerset)

has a court leet which still meets annually in October "for local purposes on the ancient lines, and as far as possible to keep up customary rights of the lord of the manor."¹

Southwark (Surrey).

Within the borough of Southwark there still exist three manors. They are (1) The Guildable Manor, on the south bank of the Thames; (2) The King's Manor, west of the Borough High St.; (3) The Great Liberty Manor, east of the Borough High St. For these three manors there is in active operation a court leet which meets once a year in October. Its records, apparently, are unpublished, but connected with it, so far back as 1561, appeared a book *The Articles of Lete and Courte for the Lyberties of Southwark*, "imprinted" by John Cawood.

In 1551 "the court leet with view of frankpledge of the manor of Southwark, late belonging to the monastery of Bermondsey, was granted to the city of London."²

In 1690 the Southwark court leet was referred to in a "Court of Conscience" bill relating to the borough.³

At the present day the leet jury meet "in St. Olave's, Southwark, under the presidency of Sir Forrest Fulton, recorder for London, who delivers a charge to the jury and reads the *Riot Act*. The jury receive about 17/6 for their arduous labours, and a very pleasant little dinner winds up the day."⁴

Southwold (Suffolk).

A court leet, mentioned in a charter of 1504,⁵ existed in Southwold until Nov. 9th, 1846. It was presided over by the high steward, and it dealt with the assize of bread, weights and measures, nuisances and other matters of those kinds. Records of the proceedings of the court from 1686 onward exist in the

¹ Letter from Mr. W. H. Wells, steward.

² Merewether and Stephens *History of Boroughs*, p. 1150.

³ *House of Lords MSS.*, Hist. Man. Com., 13th Report. Appendix, Part V., p. 221.

⁴ Letter from Mr. R. W. Bowers, who refers to his book, *Sketches of Southwark Old and New*, pp. 45-71.

⁵ Merewether and Stephens *History of Boroughs*, p. 1055.

keeping of the town clerk. The passing of the *Public Health Acts* rendered it of no further service, and it was allowed to die out.¹ In its later days the petty jury of the Easter quarter sessions acted as leet jury and made the presentations.²

Stafford

seems to have had a court leet in the sixteenth century, for Merewether and Stephens say that it is mentioned in the record of a dispute of date about 1550.³

Stakesby (Yorkshire). See Whitby.

Stepney (Middlesex)

had a court leet which about 1830 renewed its youth, and became suddenly and fearfully alert in the levying of fines. Hence a "Report on the Number of Fines assessed by the respective Leet Juries acting in and for the Manor of Stepney, 1826-1834," was laid before parliament in the latter year. The following table, culled from the report, is instructive:—

DATE.	NO. OF PERSONS AMERCED.	AMOUNT ASSESSED.	AMOUNT RECEIVED.
1826-27	777	£367 . 3 . 0	£332 . 6 . 0
1827-28	613	222 . 19 . 0	188 . 19 . 6
1828-29	1154	980 . 10 . 6	378 . 6 . 6
1829-30	2753	1772 . 2 . 0	634 . 7 . 9
(Here came an action at law.)			
1830-31	644	190 . 10 . 10	169 . 14 . 0
1831-32	743	171 . 15 . 0	167 . 9 . 6
1832-33	601	159 . 14 . 0	144 . 8 . 0
1833-34	694	333 . 0 . 0	319 . 16 . 0

Stockport (Cheshire).

A court leet existed till 1858, when the corporation of Stockport acquired the lordship of the manor. The records, says the town clerk, are nearly all lost, but he refers for information to Henry Heginbotham's *Stockport, Ancient and Modern*, 1877-92.

From this work (Vol. I., pp. 160-175) I find (1) that the title of the court in 1641 was "*Curia Portmote magnæ letæ cum visu franciplegii*," and in 1791 "The court leet and view of frankpledge and court baron of Sir George Warren, Knight"; (2) that the court leet enforced the rule that "every person

¹ Letter from Mr. E. R. Cooper, town clerk of Southwold.

² *Mun. Corp. Rep.*, IV., 2518-9.

³ *History of Boroughs*, p. 1161. Cf. also p. 781.

possessing a freehold however small" should be enrolled as a burgess and pay his relief, and that it required the attendance of all the burgesses twice a year; (3) that for many years the lord of the manor had appointed the mayor of the borough, but that a custom had sprung up according to which the lord suggested four names, from which the leet jurors selected one; (4) that the lord continued to appoint the constables; (5) that the principal modes of punishment used by the officers of the court leet were the following:—The brank or scold's bridle, the ducking or cucking stool, the pillory, the stocks, the whipping post, and (what would Sir Edward Coke have said?) the dungeon.

As to the records of the court, scattered rolls for the period 1721-91 are to be found in various private hands; the corporation possesses those for the periods 1791-1815 and 1834-58.

Stockton (Durham)

in 1835 was governed by manorial courts, at which the mayor presided.¹

Sudbury (Suffolk)

once had a court leet, of whose proceedings "one or two old minute books, but nothing else," remain with the town clerk.

Sunderland (Durham).

A "halmote" court used formerly to be held for the Bishop of Durham's manor of Houghton, in which a large part of Sunderland lies. Its last meeting seems to have taken place on October 23rd, 1851. A short report of this session is given in J. W. Summers' *History and Antiquities of Sunderland*, etc. (1858).

Sutton (Ely)

has an active court leet which meets once a year in or about May. "Besides the ordinary business of a manor court in receiving fines and taking up copyhold property, there is a special function of the Sutton court leet in the appointment—only vacancies are filled up from year to year—of 'Ten Men' who have the management and letting of the 'droves.' They practically spend the whole of the rents in keeping the drove roads in repair, in mowing down the thistles, and in maintaining the bridges."²

¹ *Mun. Corp. Rep.*, III., 1780.

² Letter from Rev. E. T. Marshall, Vicar of Sutton, Ely.

Sutton Coldfield (Warwick).

A court leet was held here from very early times down to 1885, when a new governing charter established the present system of municipal administration. From a charter of 1528 it appears that the court leet was to be held twice a year, once within a month of Easter, and once within a month of the feast of St. Michael. This was confirmed by another charter granted 1662. Most of the rolls of the court appear to have been mislaid or destroyed, but accounts of its jurisdiction are to be found in Dugdale's *Warwickshire* (1656), and Bedford's *History of the Manor of Sutton Coldfield* (1890).¹

From Dugdale's great work (pp. 663-5) I find (1) that Sutton Coldfield was held by the King at the time of the Domesday survey, but that Henry I. granted it (by way of exchange) to Roger, Earl of Warwick, the deed of grant saying: "Et habeant [dictus Rogerus et haeredes sui] liberam curiam suam ad voluntatem in omnibus liberis consuetudinibus cum visu franciplegii"; (2) that "in 13 Edward I. William de Beauchamp, Earl of Warwick, claymed by prescription a court leet here with assize of bread and beer, free chase, infangthef, tumbrell, thewe [? scold's bridle], weyf, and gallows; and it being found that he and his ancestors had exercised all these liberties and privileges time out of mind, they were allowed"; (3) that "in 3 Edward II. at a court leet and court baron held for this mannour the ancient customes thereof were certified by the jury upon their oaths."

A fragment of a court roll of 28 Hen. VIII., and a complete transcript, with translation, of a roll of 1 Edward VI., entitled "Visus Franci Plegii et Curia Domini Regis," are given in *The Corporation Records of Sutton Coldfield*, edited by W. Wilson.²

Taunton (Somerset).

In the year 904, by grant from King Edward the Elder, the bishops of Winchester obtained the manor of Taunton Deane, which Professor Maitland has called "the classical example of colossal manors."³ Within the limits of this wide domain grew up the borough of Taunton, whose freeholders in the fifteenth century secured, subject to a quit rent, some measure of local autonomy.⁴ From 1642, however, comes a "humble petition of

¹ I am indebted for the above information to Mr R. A. Reay Nadin, town clerk. Cf. also *Mun. Corp. Rep.*, III., 2034.

² *Transactions of the Midland Record Society*, Vol. III. (1899).

³ Maitland *Domesday Book*, p. 276.

⁴ *The Manorial Society's Monographs*, No. 1, p. 13.

the mayor and burgesses of Taunton concerning some misdemeanours and abuses committed by the steward of the leet court of that town (the manor thereof belonging to the bishop of Winchester) in nominating and packing of juries." ¹ In 1647, by ordinance of parliament, the bishop lost his lands, and though, after the Restoration, he recovered them, it seems probable that he did not recover the leet jurisdiction, which at the present day is in the hands of the freeholders of the borough.

Mr. H. Byard Sheppard, steward of the manor of the borough of Taunton, sends the following interesting notes:—"There is still extant a court leet in connection with the manor of the borough of Taunton. The court meets once a year, within one month of Michaelmas, for the purpose of electing bailiffs, constables, aldermen, aletasters, rhineridders, and other officers. These officers would, in the event of the town's losing its charter, be responsible for its government. The court is presided over by the steward, and the presentments are made by a jury of twenty-three. Manuscript records of the proceedings are kept." ²

Tavistock (Devon).

"As early as the reign of Edward I. the abbot claimed a court leet."³

Tenterden (Kent)

had a court leet which before 1835 had become completely merged in the quarter sessions, though, as a matter of form, it was still proclaimed twice a year therein.⁴

Tewkesbury (Gloucester)

in 1835 had a court leet which met annually in October for the appointment of constables.⁵

Torrington (Devon)

had by charter of 1554 the right to hold a court leet, but the court, if ever held, was extinct in 1835.⁶

Totnes (Devon)

had in 1835 a court leet held twice a year in close connection with the Easter and Michaelmas quarter sessions. The town

¹ Merewether and Stephens *History of Boroughs*, pp. 1654-55.

² For an account of the Taunton court in the eighteenth century, see Webb's *English Local Government (Manor and Borough)*, Book III., Ch. II.

³ Merewether and Stephens *History of Boroughs*, p. 1736.

⁴ *Mun. Corp. Rep.*, II., 1067.

⁵ *Mun. Corp. Rep.*, I., 128.

⁶ *Mun. Corp. Rep.*, I., 635.

clerk made out the list of jurors, which he submitted to the mayor. At the first court of the year the borough officers were nominated, at the second they were sworn in.¹

Truro (Cornwall)

under a charter of 1589 had, according to the *Municipal Corporations Report*, a court leet still active in 1835. The report says:—"The charter gives a court leet and view of frankpledge, to be held in some convenient place twice a year, within a month after the feast of St. Michael the Archangel, and within a month after the feast of Easter, before the mayor or his deputy, and the recorder or his deputy. The court of view of frankpledge is directed to be held before the recorder or his deputy, who, for that purpose, is named the steward of the court. The court is only held once a year, in October. Felonies and misdemeanours are triable in this court, but for the last ten or twelve years no indictments have been preferred. The grand juries are summoned from the inhabitants of the borough. About one half of the jurors are usually capital burgesses, whose names are placed first on the list. The petty juries were summoned in the same way. The grand jury make presentments, and appoint a viewer of Tregear water, a stream from which the town is principally supplied."²

Tupcoates-cum-Myton, Hull (Yorks.).

This manor is now the property of the corporation of Hull. It had a court with leet jurisdiction, the extant rolls of which are representative of the four and a half centuries which began in 1390 and ended in 1841; at the latter date the court seems to have died out. Some valuable extracts from the court rolls have been printed by Mr. J. Travis-Cook in his *Notes relative to the Manor of Myton* (1890). From these we may note (1) that the title of the court in 1390 was simply "curia domini Michaelis de la Pole"; in 1458 was "curia cum leta"; in 1491 was "curia magna cum visu franciplegii"; (2) that the court was undifferentiated: thus in 1458, first, Thomas Blackstone came into court and yielded up a certain meadow place with common pasture; and next, Richard Hanson was amerced 2/- for failure to repair his causeway. So late as 1671 the rolls were kept in Latin, though occasionally the Latin was translated into English which at the present day would, apart from the help given by

¹ *Mun. Corp. Rep.*, I, 642. See also above, under *Bridgetown*.

² Cf. also Merewether and Stephens *History of Boroughs*, pp. 1874-7.

the Latin original, be unintelligible: thus a man was in 1671 amerced "pro non excoriando fossam suam," which is said to mean "for not clecking his dyk." One class of suitors at this court affords an interesting parallel to the freesuitors of Southampton. Of this class Mr. Travis-Cook writes (p. 155): "From the earliest roll which has survived it is clear that freehold tenants attended the court to perform fealty for their holdings; and in the time of Duke John [of Suffolk, 1450-91] the roll contains a list of *sectatores curiae* . . . who were certainly suitors of a court baron, because so termed from the writ *secta ad curiam*, used to compel the performance of a tenant's suit of court where it was an express condition of his grant."

Tutbury (Staffordshire)

had a court leet which ceased "over forty years ago," *i.e.* before 1867.

Tweedmouth and Spittle (Berwick-on-Tweed).

The manor of Tweedmouth and Spittle is held by the mayor, aldermen, and burgesses of Berwick-on-Tweed, who purchased from its former lords, the Earls of Suffolk. Mr. W. Weatherhead, the steward of the manor, sends me the following note: "The lords have a court of view of frankpledge and a court baron held twice a year, at one of the inns in Tweedmouth, at Michaelmas and Easter, at the former of which constables are appointed for the manor and sworn in, four for Tweedmouth and three for Spittle. The court had also jurisdiction to try civil actions when the amount in dispute did not exceed 40/-, but this power was taken away by the *County Court Act* of 1867. The officers consist of a steward and a bailiff, the latter being a permanent official appointed by the lords, and not by the jury at the court leet from time to time, as is the custom in most manors. The extent of the court's jurisdiction is now much limited since the passing of the *Public Health Acts*."

Uppingham (Rutland).

Within the parish of Uppingham are two manors, one attached to the rectory, and the other called "The Manor of Preston with Uppingham," of which the Earl of Gainsborough is lord. The court leet of the rectory manor has fallen into desuetude; but that of the earl's manor continues to be held once a year.

Usk (Mon.)

in 1835 had a court leet held twice a year. The *Municipal Corporations Report* of that date says: "No business is transacted except elections and the presentment of nuisances. If these be not abated, indictments are preferred at the quarter sessions for the county."¹

Wakefield (Yorks)

was, at the end of the thirteenth and the beginning of the fourteenth centuries, one of the many manors of the Earl of Surrey. It was governed by a court baron and court leet. The Yorkshire Archæological Society has published two volumes of its rolls, which go back to a much earlier date than is common. Vol. I. contains the records for the years 1274-97, and Vol. II. for the years 1297-8 and 1306-9.

Wales

had a large number of courts with leet jurisdiction in its marcher lordships. To these the statute 27 Hen. VIII., c. 26, refers when it says (§ 26), "the lords marchers are to keep all their liberties and their courts-barons, courts-leets and lawdays, with waife, stray," etc. A few of these have been referred to above; others are mentioned by Merewether and Stephens.²

Wallingford (Berks)

had a court leet in 1835.³

Wareham (Dorset)

had in 1835 a court leet "held before the steward of the lord of the manor, the manor not belonging to the corporation." In this court the steward selected four men eligible for the office of constable, and their names he sent on to the mayor of the borough, who from the four men named chose two to serve for the year.⁴

Warrington (Lancs.)

had a "court leet and court baron," the manuscript records of which, for the years 1792-1840, are at present in the municipal museum. During the later years of its existence it seems to

¹ *Mun. Corp. Rep.*, I., 416.

² E.g., Aberystwyth, Atpar, Cardigan, Lampeter, *History of Boroughs*, pp. 2108-9.

³ *Mun. Corp. Rep.*, I., 134.

⁴ *Mun. Corp. Rep.*, II., 1361.

have done little more than appoint various officials (e.g., inspectors), present nuisances, and—strange and novel duty—manage the fire engine. The manorial rights were sold to the corporation in 1851.¹

Warwick.

Mr. Brabazon Campbell, town clerk of Warwick, writes:—“A court leet is still held every year in this borough. It is kept alive for one particular purpose, viz., because the four chamberlains (managers) of our commonable lands are appointed by the leet jury. Its earliest extant records are of date 1610.” Mr. Campbell also sends me a copy of Mr. Thomas Kemp’s *History of Warwick and its People*, from which I gather the following further information (pp. 228-231).

The court is held towards the end of October before the mayor. “By virtue of a precept directed to the sergeant-at-mace by the steward of the court leet, a jury is summoned of twenty representative towns-people who are not members of the corporation.” After the jury has been charged, the steward (the town clerk) “invites any of the public who may attend to make any ‘presentments.’ From time to time advantage has been taken of this opportunity by burgesses to present in writing matters relating to the town which they are of opinion should be considered by the corporation, and in this way the court may serve a useful purpose, for as soon as presentments have been made the court is adjourned to the court house, where the jury sit in private and discuss any presentments which may have been laid before them, or any others they may think fit themselves to originate; and such as they are of opinion should be laid before the lords of the leet² are entered in their record book and brought before the town council in due course, and, coming from so responsible a body, are very fully considered.”

Besides the chamberlains, who control the commons, various sinecure officers are elected—constables, overseers of pavements, and tasters or weighers of bread, fish, flesh, ale, and butter.³

Weobly (Hereford)

had in 1835 “two constables elected at the court leet annually.”⁴

¹ Letter from Mr. Charles Madeley, director of the municipal museum and library.

² The bailiff and burgesses of Warwick were recognised as “Lords of the Leet” by a royal charter of 1554.

³ Cf. also *Mun. Corp. Rep.*, III., 2061.

⁴ *Mun. Corp. Rep.*, I., 419.

West Looe (Cornwall)

had, under a charter of 16 Eliz., a court leet which in 1822 gave rise to a case somewhat notable in the legal history of leet jurisdiction, viz., the case *R. v. the Mayor and Burgesses of West Looe*.¹ The points at issue were the modes of enrolling burgesses and electing the mayor. Sergeant Merewether, who maintained the cause of the leet—contending that burgess and inhabitant were originally convertible terms, that burgesses were enrolled in the court leet, and that the court leet was the elective folkmoot—has left a very full account of the case,² and one may perhaps suppose that it was the learned sergeant's studies in connection with it that led him to adopt towards leets in general that attitude of uncritical admiration which marks and mars the *History of Boroughs*. In 1835 the court leet of West Looe still met twice a year.³

Westbury (Wilts)

had in 1835 a "borough court," also known as "view of frankpledge, leet, or lawday." It claimed attendance from all residents, and so late as 1787 fined absentees 2s. 6d. each. It is noteworthy that it had two juries; one, which had somehow acquired the designation "grand," for the election of constables and other officers; the other, called "petty," for the presentation of nuisances.⁴

Westminster.

The city of Westminster presents us with a curious example of what appears to be the late creation of a court exercising leet functions. In the reign of Elizabeth a "court of burgesses" was recognised—and, in the weighty opinion of Mr. John Hunt, the present town clerk, *initiated*—by Act of Parliament (27 Eliz., cap. 31). The city was divided into twelve wards, each of which sent one representative to the court, whose meetings took place once a year, on the Thursday in Easter week. The court dealt with the familiar leet matters of "incontinences, common scolds, inmates, common annoyances," etc. It continued, confirmed from time to time by statute, till 1901, when it was abolished by an Order in Council under the *London Government Act* of 1899, its powers being transferred to the mayor, aldermen, and councillors.

¹ 3 Barn. and Cres., 683; Merewether and Stephens *History of Boroughs*, p. 2224; Scriven *Copyhold*, p. 80.

² *Report of the Case of the Borough of West Looe*, by H. A. Merewether (1823).

³ *Mun. Corp. Rep.*, I., 540.

⁴ *Mun. Corp. Rep.*, II., 1378-9.

But the interesting thing about the court is that in the middle of the eighteenth century two additional pieces of machinery, framed on the old model, were added to it. By the Act 29 Geo. II., cap. 25, was introduced an "annoyance jury," not to exceed forty-eight in number, whose duty was to present nuisances, defective weights, etc. By the Act 31 Geo. II., cap. 17, a further "leet jury" was established. Its numbers were not to exceed thirty, and its function was to present year by year to the court of burgesses 160 fit and proper persons from whom the court was to select eighty to serve as constables.¹

Respecting this Westminster leet we have a unique source of information in a rare pamphlet dated 1743, and attributed to Sir Matthew Hale. It is entitled: "*The Power and Practice of the Court Leet of the City and Liberty of Westminster displayed, being a full relation of the case lately depending between the High Bailiffs and William Philips, with its decision in favour of the latter.*" Its tone is strongly hostile both to the Westminster leet and to leets in general, whose decay it attributes to the malpractices of which they were guilty (p. 2). As to the case "displayed," it seems that one William Philips, a very poor working barber, was summoned to appear at the court leet of October 6th, 1741, at 8.0 a.m., to take up the office of a constable for the ensuing year. He duly came at 8.0, waited till after 9.0, and then, the court not having been opened, "went about his necessary occasions." Somewhat after 10.0 the court met, and the high bailiffs fined Philips £10 for contempt in not appearing. This fine Philips refused to pay; hence a distress warrant was issued by the bailiffs, and Philips was sold up—"every rag of goods and even his shop tools" going to swell the ultimate sum-total of £7 10s. The unhappy victim made known his woes, and powerful champions took up his cause. The opinion of counsel was obtained, and the case brought before the court of common pleas, in which, after securing two adjournments, the defendants allowed judgment to go by default. Philips ultimately obtained, through the sheriff's court, £21 damage and costs. The positions taken up by his counsel had been—(1) that the constables should have been appointed by the leet jurors, not summoned beforehand by the bailiffs; (2) that absentees should have been amerced by the jurors and not fined by the bailiffs; (3) that distress of instruments of trade is unlawful.

¹ Cf. *A Retrospect* by the town clerk, bound up with *Report of the Westminster City Council* for 1901-2.

Among the parliamentary papers for 1834 is to be found, under date August 7th, a "*Return of all Monies received as Fines and Amerciaments by the Court of Burgesses and Court Leet for the City of Westminster as far as the same can be ascertained.*" From this it appears—(1) that during the period 1821-33, the fines imposed by the court of burgesses on persons who had neglected suit or office ranged from £8 in 1821 to £56 in 1828; (2) that during the period 1815-33 the ameracements imposed by the annoyance jury on persons using false weights and measures ranged from £57 in 1818 to £304 in 1833.

Weymouth (Dorset)

had in 1835 two distinct courts leet, the one held for Weymouth itself, the other for Melcombe Regis. Both, however, were held at the same time and place, and before the same mayor and bailiffs.¹

Whitby (Yorkshire)

presents a case of much constitutional interest and some complexity. The name "Whitby" has three distinct denotations; there are three concentric areas to which it has been applied. These are:—

(1) *The Liberty of Whitby Strand*. This liberty, or "great manor" as it was often called, was one of the Yorkshire wapentakes or hundreds, which had passed into private hands. It was held in the middle ages by the abbey. Along the Yorkshire coast it stretched southward to include Robin Hood's Bay, while inland it dipped still deeper to take in Hackness. Altogether it comprised some four or five hundred square miles of coast and moorland territory. There was for the government of this liberty the great court of the abbot, corresponding to the hundred court of the national system, and in connection with this the stewards of the abbot made their periodical "tours,"² corresponding to the sheriff's tourn. But, as was the case with the hundreds which remained in the sheriff's jurisdiction, several manors within the liberty obtained the right to hold leet courts of their own—thus, no doubt, securing exemption from the "turnus abbatis." One or two of these courts survive to the present day, e.g., the court leet of Whitby Laithes, which meets in the autumn of every second year, and the court leet of Fyling,

¹ *Mun. Cor. Rep.*, II., 1388.

² An account roll of 1394 contains the item: "De turno abbatis xix. s."

which has an annual session. These moorland manor courts are still active, appointing moorsmen and pinders, presenting encroachments, issuing orders, and so on.

(2) *The Manor of Whitby.* This manor, within which the abbey had been planted, was the most important of all the manors included within the extensive liberty of Whitby Strand. It had a leet court of its own, some of whose records from 1560 to the present day are extant. This court still continues to meet, though only once every two years, and then for purely formal business.

(3) *Whitby Town.* The town of Whitby sprang up under the shadow of the abbey, but not wholly within the Whitby manor. It spread across the river Esk, which forms the boundary of the manor, and occupied the opposite bank, which lies within the manor of Stakesby, another of the manors of the same liberty. This manor of Stakesby also had a leet court. This, too, has continued to meet down to the present time; though, as is the case of the court of the adjacent Whitby manor, its sessions are biennial and merely formal. Thus Whitby town was not a constitutional unit. It cannot be said, indeed, that until the passing of the *Reform Act* of 1832 it was in any legal sense a borough, and even the Act of 1832 made it such only for parliamentary purposes.¹

Wickwar (Gloucestershire)

had a court leet which, in 1835, was reported as "yet holden." It seems, however, to have come to an end soon afterwards, on the reform of the corporation. It was held once a year, in October. The "homage jury" at this meeting presented for the office of mayor one of the resident owners of freehold houses within the borough. I gather that the borough of Wickwar sprang up within the manor (now belonging to the Earl of Ducie) of the same name, and that the lord of the manor continued to hold the leet court, in which, however, at any rate in later times, two juries were impanelled, one for the borough of Wickwar, the other for "Wickwar Foreign," *i.e.*, for that portion of the manor which remained without the borough limits.²

¹ My main authorities for the above are letters received from Mr. George Buchanan, a learned antiquarian, who has been for forty years steward of the manors of Whitby and Stakesby. Cf. also Canon Atkinson's *Memorials of Old Whitby*.

² Letter from Mr. H. Goldingham, clerk to the Wickwar Parish Council. *Mun. Corp. Rep.*, I., 318.

Wigan (Lancs.)

once had a court leet. Very few traces of it, however, have been allowed to remain. The court roll for 1742 is given in full in Mr. David Sinclair's *History of Wigan*, 1882 (pp. 221-29), and this is supplemented (pp. 230-36) by a list of petitions presented on the same occasion.

Winchcombe (Gloucester)

had a court leet as late as 1853, but whether later I have not been able to find out. The following notice, sent to me by Mr. E. Lee Hall, is interesting :—

“Borough and Manor of Winchcombe, in the County of Gloucester. Notice is hereby given, that the Court Leet and View of Frankpledge with the Court Baron of John Dent and William Dent, Esquires, Lords of the Borough and Manor aforesaid, will be holden at the usual place (namely, the Town Hall), within and for the said Borough and Manor, on Tuesday, the 25th day of Oct. inst., at 12 o'clock at noon, when and where the bailiffs, burgesses, constables, and resiants, and all others whom it may concern, are in their proper persons to give their attendance to do, perform, and execute their offices, suits, and services; and the several fee farm and other Tenants are also to pay their respective rents due to the Lords of the Fee as of right accustomed. Dated this 8th day of October, 1853. D. Trenfield, Steward.”

Windsor (Berks)

had a court leet which, in 1439, was in dispute between the prior of Merton and the mayor and burgesses of the borough.¹

Wirral (Cheshire).

The leet jurisdiction of the court of the hundred or wapentake of Wirral, in Cheshire, was in active operation till 1856, in which year the court—says Mr. R. Stewart-Brown, of Liverpool, who has just published its history—“ended a scandalous existence.” For nearly forty years previous to its destruction it had been used as an engine of extortion and tyranny by an unscrupulous and astute lord and an astute and unscrupulous steward.² Only one old court roll is known to be extant, viz., that for 1744. From this it appears that of the sixty or more townships included within the geographical limits of the hundred, only sixteen actually sent suitors to the hundred court.

¹ *Year Book*, Henry VI., 1439, fol. 11 b. : cf. also Merewether and Stephens *History of Boroughs*, p. 299.

² *The Wapentake of Wirral*, by R. Stewart-Brown, 1907.

Wiston (Pembroke)

had in 1835 a court leet in which all the corporation business was transacted. It was called "The court leet of the manor and borough of Wiston." A court baron was nominally held at the same time. The jury of twelve was picked by the town clerk from a list presented to him by the bailiff.¹

Woodstock (Oxford)

had, under a charter of Charles II., the right to hold a criminal court entitled "Sessio Pacis ac etiam Visus Franci Plegii." This court, which seems to have succeeded an older leet court, had authority to try all crimes excepting murder, felony, and other matters touching life and limb. In the early nineteenth century it was commonly known as the "court leet." When the Municipal Commissioners made their inquiries concerning it, it seemed to have died out; for no session had been held since October 1st, 1829. It appears, however, spasmodically to have revived at later dates, for there are records of the holding of a "view of frankpledge" in 1838 and again in 1853. Presentments were not regularly entered in books, and "only odd sheets of paper containing the records of at most half-a-dozen views have been preserved."²

Wotton-under-Edge, and Wotton-Foreign (Gloucester).

The relation of Wotton-under-Edge and Wotton-Foreign to one another would appear to be the same as that of the neighbouring Wickwar borough and Wickwar-Foreign. I gather that within the Berkeley manor of Wotton the borough grew up, but that it remained under the jurisdiction of the manorial leet court; for in 1835 the custom prevailed that the homage of the borough should present in the leet the names of three burgesses, from which the lord of the manor should select one to be mayor.³ The reform of the corporation under the Act of 1835 brought this state of things to an end, and the jurisdiction of the court leet over the borough came to an end. But over Wotton-Foreign, that is over that portion of the manor which lay outside the borough, its jurisdiction continued, and still continues; for every year, in October, the court leet meets at the *White Hart* hotel. It elects a constable, a tithingman, and haywards, whose duties now are purely nominal. "In

¹ *Mun. Corp. Rep.*, I., 423.

² *Mun. Corp. Rep.*, I., 143. *Ballard Chronicles of the Royal Borough of Woodstock*, pp. 70, 72, 124, 125, 135.

³ *Mun. Corp. Rep.*, I., 150.

addition to this, the jury discuss the affairs of the neighbourhood in a more or less friendly and informal way, and present neglect of duty on the part of the public authorities, such as want of repair of roads, and also neglect of owners to trim their fences, maintain footbridges, and clear out brooks."¹

Worcester

once had a court leet, but it was disused in 1835.²

Yarmouth (Suffolk)

had a court leet which presents many interesting parallels to the classic example of leet jurisdiction which Norwich, in the neighbouring division of East Anglia, supplies. In Yarmouth in 1379 (to which year the oldest record belongs) there were, as in Norwich, four local divisions called leets, viz., the north, the north-middle, the south, and the south-middle leets. In each of these a court leet was held by the four bailiffs of the town: it seems to have been regarded as one and the same court, though held on four different days, in four different places, for convenience sake. Presentments, as at Norwich, were made by the capital pledges. Evidence to a similar effect comes from the following century.³ In 1835 a court leet was still held in the town, though only once a year, October 18th, before the common clerk as steward. Encroachments, nuisances, and other public offences were presented. The report says: "The jury consider themselves sworn into office for a year, and are in the habit of examining the weights and measures four or five times in the year. Six or eight of them go round at a time, and on finding any short weights or measures they seize them and then call the whole body to join in examination. They occasionally impose fines."⁴

CHAPTER XXXV.—SOME GENERALISATIONS.

§1.—Introductory.

In view of the fact that Part III. of this *Essay* has been reserved for a brief historical *resumé* of the rise, development, and decay of leet jurisdiction in this country, it is not necessary

¹ Letter of Mr. Charles Scott, steward.

² *Mun. Corp. Rep.*, I., 166.

³ Merewether and Stephens *History of Boroughs*, pp. 734-9, 798, 898, 1062-4.

⁴ *Mun. Corp. Rep.*, II., 917

for me in this place to do more than indicate one or two of the leading general truths that seem to emerge from the scattered fragments of information which I have gathered together in the preceding chapter.

§2.—Divergence of Leet in Practice from Leet in Legal Theory.

Perhaps the largest and most important generalisation which impresses itself upon the attention of the investigator of the leet in practice is its remarkable divergence from the ideal of the court keepers' guides. Except in the case of the Manchester leet there is, in respect of all the courts concerning which detailed evidence is available, an extraordinary absence of resemblance; and even in that one isolated case the resemblance is of late development, is traceable to the direct moulding of stewards learned in the law, and, even so, is not quite perfect and complete. (1) Some of the courts, such as that of Godmanchester, deal primarily with the regulation of the common lands; others, such as that of Ashburton, register the deaths of freeholders and the alienations of freehold estates; while in one instance, viz., that of Bewdley, the transference of property seems always—in the opinion of the present steward—to have been the sole business of the court. (2) The Bradford court leet, if in any way it was, as is stated, affected by the passing of any of the *County Court Acts*, must have been engaged in the un-leet-like task of collecting small debts. (3) Very many so-called courts leet were in 1835 fulfilling few or no functions save those of electing various officials—pinders, constables, portreeves, mayors, and countless others, including in one instance (that of Bideford) the people's churchwarden. This was particularly the case in the numerous boroughs—such as Aberavon, Altrincham, Petersfield, Taunton, and Wotton—which sprang up within the borders of feudal manors, and which failed to secure complete emancipation from the manorial lord. These elective functions, however, cannot, in the majority of cases, be allowed to be leet functions at all. Even if it be admitted that control of watch and ward, and bread and ale, carried with it the right to appoint constables and officers of the assize, it cannot be allowed that a manorial court leet ever, as such, had the right to nominate municipal officers for the administration of boroughs which had sprung up in the midst of the manor. One can readily understand how the election of mayor or portreeve had come to be dealt with at the great annual leet-

assembly presided over by the steward of the manor and attended by all the residents of the borough, in common with those of the rest of the manor; but all the same it was no leet matter, and the courts which (like that of Aberavon) had in 1835 ceased to do anything else, had, in spite of their name, ceased entirely to be courts leet. (4) If, however, as we come down to very recent times, we find many courts called leets which are performing few or no leet functions, on the other hand, wherever we are able to trace modern courts backwards beyond the veil of the Renaissance into the middle ages, we invariably find them performing many functions other than leet functions. Without any exception we discover undifferentiated courts, in which the distinction between court leet and court baron is wholly unrecognised by name, and is in substance discernable at most only as a difference of procedure, and in which the so-called court customary vanishes from sight altogether as a court, and becomes in form what it always remained in fact, viz., the steward's office-hour for the conveyance of copyholds and for the settlement of other business connected with them—an administrative rather than a judicial session.

§3.—Existence of Leet within Leet.

In one group of most interesting cases we have found traces of the existence of a complex system of leet within leet. The leet jurisdiction of Berkeley, Clitheroe, Halton, Macclesfield, Manchester, Salford, Taunton, and Whitby was not a simple and single affair, but was divided up among the members of a graded series of courts. In each case we have an example of what has been called—by an abuse of language—a “hierarchy” of courts. At the top is the court of a hundred, or franchise, or barony, or honour; within its sphere, and owing feudal suit to it, are the courts of various manors; while within these again, here and there, are the halmotes of sub-manors or the portmotes of nascent boroughs. Now in the feudal system, *i.e.*, in respect of tenure, and in jurisdiction arising from tenure, these courts might, and did, vary in rank. The hundred court of Salford *did* demand suit from the constables of Manchester; the baronial court of Manchester *did* demand suit from the constables of Ashton-under-Lyne and a score of other places. But all this had nothing to do with leet jurisdiction. Leet jurisdiction was one and the same in rank and quality to whatever court it might be attached, whether to the court of a great honour, or to

the no-court of a single message. There was no appeal from one leet court to another; no summons in respect of leet jurisdiction addressed to a lower court to do suit or service to a higher. There were leets *within* leets in interminable complexity, but not leets *above* leets.

§4.—Causes of Decay of Courts Leet.

As we note the later history of the many courts leet which have wholly disappeared, and as we observe the dates of their disappearance, we are not left in doubt as to some of the leading causes of the decline of leet jurisdiction in England. In the frequent fusion of the six-monthly meeting of the court leet with the contemporaneous quarter-sessions we see clear evidence of the triumph of the justices of the peace over the sheriff and the steward. In the general discontinuance of municipal courts leet after 1835 we see the influence of the emancipation of boroughs from manorial control effected by the *Municipal Corporations Act*. In cases where sanitary duties had remained the most important of the duties of the leet jurors, the *Public Health Acts* tended to destroy the courts; while in cases where police duties had been prominent, the establishment of Sir Robert Peel's new constabulary proved generally fatal. In one form or another the improved local administration of the eighteenth and nineteenth centuries in nearly every case deprived them of effective jurisdiction, leaving them to survive—if survive they do—merely as interesting antiquarian relics.

END OF PART II.



PART III.

History of Leet Jurisdiction.

History of Leet Jurisdiction.

CHAPTER XXXVI.—GENERAL SKETCH.

§1.—Introductory.

The main part of my task is accomplished. In the first part of this *Essay* I have analysed in some detail the legal theory, both of the immature leet jurisdiction of the middle ages, and of the fully developed court leet of the modern era. In the second part I have examined leet jurisdiction in practice; have on the one hand displayed with considerable minuteness the nature of the functions exercised by the court leet of Southampton, and have on the other hand sketched in broad outline the dominant traits of the jurisdiction of such other courts leet of England and Wales as I have been able to collect definite information about. It has, I think, been made unmistakably clear to those who have followed the course of these two studies, that the leet of historic fact has always been very different indeed from the ideal "court leet" of modern legal theory. But it will also, I imagine, have been made evident that as age has succeeded age, the divergence between theory and practice has tended to become less marked, and that the two—mainly through the standardising influence of the King's Bench—have continuously shown symptoms of an approximation which might have ended generally (as it did in the particular case of the Manchester court) in harmonious accord, if it had not been that leet jurisdiction, both in theory and in practice, ceased to be of importance when, under changed conditions of national life, the old order perished, "giving place to new." It merely remains for me to bring together into one brief summary narrative the leading threads of the two studies, and to trace in chronological sequence the story of how, under the clashing influences of persistent custom and insistent law, leet jurisdiction rose, flourished, and decayed.

§2.—The Main Stages.

I think that it will be possible to condense the narrative into five short chapters. In the first (Chapter XXXVII.) I propose to treat of the dark and mysterious constitutional era that preceded the Norman Conquest, respecting which the most confident of the few generalisations that I will venture to make is that it was an era radically different from the early-modern lawyers' conception of it. In the second (Chapter XXXVIII.) I will trace the extension of the royal authority (with the consequent humiliation of the communal and seignorial courts) which was a conspicuous feature of the constitutional history of the two centuries following the accession of William I. (1066-1285). The third (Chapter XXXIX.) I assign to a sketch of the process by which, during the period extending from the reign of Edward I. to that of Henry VII. (1285-1485), the intractable fragments of the infinitely various mediæval jurisdictions were rubbed and fretted by legislators and judges into some semblance of uniformity. For the fourth (Chapter XL.) I reserve the description of the court leet in its fully developed form, that is, as it existed and exercised its lowly "standardised" jurisdiction during the Tudor and Stuart periods (1485-1685). Finally, in the concluding chapter (Chapter XLI.) I shall depict the decay of leet jurisdiction in England, and discuss the causes thereof.

Throughout the whole of this part, and especially in the earlier portion, I shall have to deal with questions respecting which there has been much controversy, and concerning which there is still considerable doubt and uncertainty. I shall, therefore, speak with diffidence and hesitation.

CHAPTER XXXVII.—PRIMITIVE LAW AND JUSTICE.

§1.—Origins: opposing views.

We have seen¹ that the early-modern lawyers, as represented by Kitchin and Sheppard, had an intelligible and consistent theory both as to the constitution of primitive society and the origin of leet jurisdiction. In the beginning, they said, the king was the supreme governor of the realm; all local authority was

¹ See above, p. 76.

of the nature of a delegation from him ; courts leet, in particular, were ordained by him "for reformation of publick offences, or crown matters within the precinct thereof."¹ In other words, leet jurisdiction was from the first a regality, conceded to a subordinate political authority, to be exercised within a prescribed area.

These early-modern lawyers, in formulating their theory, looked upon primitive institutions through the triply distorting media of the civil law, the canon law, and feudal law. Through the veil of the civil law which Bracton had interposed between the eyes of his successors and the facts of antiquity, they saw, or thought they saw, all power and authority emanating from the monarch;² through the pervasive haze of the canon law, which as an exhalation from the ecclesiastical courts had settled over the whole land, they saw, or thought they saw, all secular justice centralised at Westminster, as all spiritual justice had been, during the ages of faith, centralised at Rome;³ through the close-woven and ubiquitous network of feudalism they saw, or thought they saw, all jurisdiction to have been originally territorial in its nature, attached—like the customary tenants of the late-developed manor—to the soil.

Recent scholarship has succeeded in getting beyond and behind these distorting media of late-intruding ideas, and has revealed an institutional world different in every respect from that depicted by the theorists of the sixteenth, seventeenth, and eighteenth centuries. In the place of primeval kings in undisputed possession of an unlimited divinely-ordained monarchy, portions of which they dole out on trust to dependants and subordinates, it has revealed a polity evolved by infinitely tedious stages out of the rude institutions of homeless, predatory, hunting hordes, of tented, slow-migrating, pastoral tribes, and of slow-settling, house-building, agricultural clans, from which polity royalty has emerged but late and gradually ; and it has disclosed the early kings of history, not despots superior to, or sources of, law, but men struggling with long-doubtful success to gather to themselves, and claim as *regalia*, or pleas of the crown, causes which had for countless antecedent ages been adjudged by the communal group according to the customs of the race.⁴

¹ Sheppard *Court Keepers' Guide*, p. 4.

² Bracton *Tractatus de Legibus*, ff. 14 a and 55 b.

³ Pollock and Maitland *Hist. Eng. Law*, Vol. I., p. 114 : "It [the canon law] was a wonderful system. The whole of western Europe was subject to the jurisdiction of one tribunal of last resort, the Roman curia."

⁴ Cf. Jenks *Law and Politics in the Middle Ages* (1898) and *History of Politics* (1900), also Herbert Spencer *Political Institutions*.

§2.—Law and Justice in Early England.

We see, then, in the England of the early Anglo-Saxon period, not a territorial monarch dividing a kingdom into shires, and sub-dividing shires into hundreds, but rather clans in process of being welded together under pressure of conflict into small kingships, and small kingships amalgamating in the course of generations into a heptarchy of greater ones; and these, finally, under stress of Danish invasion, and under the influence of the church, attaining a late, imperfect unity—the whole system, moreover, by but very slow gradations settling itself down within the fixed geographical limits of hundred, shire, and kingdom. We may, moreover, imagine that, intermingled with this Teutonic polity, were relics of the older Celtic and Ivernian systems, and thus we may be permitted to believe that such an open-air court as that of the Southampton Cutthorn had from extremely remote times a continuous existence which successfully defied the chances and changes of Belgic, Roman, Saxon, Danish, and Norman occupations. To the sphere of the jurisdiction—if we may employ the term “jurisdiction” in speaking of these distant ages—of these primitive moots, whether Teutonic or pre-Teutonic, there would be no limit: the highest “justice” would be theirs. The old gallows of Southampton was close to Cutthorn, and doubtless, in days before the “king’s peace” and the “pleas of the crown” were heard of, many a robber and thief made his short last journey from one to the other. Into the vexed question whether the invading and settling clans of Angles and Saxons which established themselves in the southern part of this island in the fifth and sixth centuries were groups of free warriors, or were already men dependent upon lords, this is not the place to enter. It is enough to be able to believe that, whether in free assembly or in seignorial moot, they were judicially autonomous—capable of declaring doom in all causes whatsoever.

§3.—The Influence of the Church.

Into this clannish and decentralised scheme of things the Christian church, when in the sixth century it came, and in the seventh century established itself in its Roman form, introduced three new elements. For it came strong in the traditions and replete with the institutions of the empire of the Cæsars. First, it treated jurisdiction as centralised and emanating from a monarchical source; secondly, it regarded jurisdiction as terri-

torial and associated with definite areas; thirdly, it acquired, or assumed for itself, jurisdiction, and that of the highest kind, in a large number of local divisions, both hundreds and shires—for example, the bishopric of Durham was, in Norman times at any rate, a palatine earldom possessed of powers of regal magnitude, while in the Worcestershire hundred of Oswaldslaw the bishop came to exercise a judicial authority scarcely inferior.¹ Now with respect to the older of these great ecclesiastical franchises the question presents itself, How did they originate? Whence did archbishops, bishops, abbots and priors derive the extensive powers which they undoubtedly possessed at the time of the Norman Conquest, and which they undoubtedly continued to exercise even at the date of the *quo warranto* inquests of Edward I., two centuries later? Some ecclesiastical immunists could produce genuine charters of Edward the Confessor; for in the late day of this feeble-pious monarch the feudal theory of the royal origin of justice was fully established, and it was well (and, moreover, supremely easy) to obtain from the king's hands documentary confirmation of liberties. Others could produce forged—but, in that uncritical age, equally valuable—charters attributed to Canute, or Edgar, or yet earlier rulers.² Others, again, could refer in vague words to grants made by early kings, but could make no pretence of adducing any documentary evidence of their assertions.³ But “some of the highest powers were claimed by prescription only”; indeed “we may state as a general rule that just the very highest jurisdictional powers were seldom claimed by any other title”; so that when the greatest immunists could claim to hold “all the pleas of the crown,” it was nearly always on the ground that “they and all their predecessors have done the like, so they say, and so the country says.”⁴ These vast liberties of the Church seem, therefore, to take us back to ages before feudalism had established itself, before charters conferring jurisdiction were necessary, or had even been dreamed of, before the king's peace had been proclaimed, before the pleas of the crown had been snatched from the hands of local magnates or clan leaders, before the king had been evolved in the plenitude

¹ Nash *Worcestershire*, I., lxxii-lxxiv., and Maitland *Domesday Book and Beyond*, pp. 267-269. At the time of the Domesday survey seven out of the twelve Worcestershire hundreds were in ecclesiastical hands: Worcester had three, Westminster two, Evesham one, Pershore one.

² Cf. the Croiland forgeries: Hallam *Middle Ages*, II., 416; *Essays in Anglo-Saxon Law* (Essay I.), by Adams.

³ Thus the hundred of Ramsbury, in Wiltshire, was claimed by the bishop of Salisbury in virtue of an alleged grant made by Offa of Mercia: *Rotuli Hundredorum*, II., 231.

⁴ Pollock and Maitland *Hist. Eng. Law*, I., 584.

of his power. The bishops and abbots, in short, would appear to have inherited and exercised, without questions asked or answered, the autonomous and unlimited authority of the primitive community.

§4.—Blood-feud—Compurgation—Frankpledge.

One other matter of a different kind seems to demand a word of notice. Although it would be irrelevant to discuss here the large topic of primitive judicial procedure, so radically dissimilar in its fundamental principles from our own as it was, yet one patent feature of it must not be ignored; for it was a feature which it had in common with the leet jurisdiction of later times: There was nothing in it which corresponded to a "trial" in the modern sense of the term. In the procedure which anteceded, and in later ages excluded, the impartial judicial investigation of specific accusations, I am disposed to seek for a chain of unbroken continuity linking together the blood-feud of the earliest recorded times with the leet jurisdiction of the latest.

(1) *Blood-feud*. In the case of the early English,¹ their German kinsmen,² and indeed all other primitive peoples³ at one stage of their political development, vengeance for the graver crimes, and probably also redress for minor grievances, lay in the hands of the kin of the injured man. They pursued and supported his feud; they exacted the penalty of amendment and revenge. Moreover—and this is the important point—the kin of the offender shared responsibility for his guilt: they either made redress for his ill-deeds, or maintained his cause in battle with the avengers.⁴

(2) *Compurgation*. The meliorating influence of Christianity, and the growing power of kings, stamped down the barbarism of the blood-feud and established a milder method of redress, which, nevertheless, was developed out of the blood-feud, and which retained many of the essential features of its antecessor.⁵ In place of the battle was introduced the oath—a less sanguinary

¹ Carter *Hist. Legal Instit.*, p. 12; Pike *Hist. of Crime in England*, Vol. I., pp. 41, 57-62, 289-90; Pollock and Maitland *Hist. Eng. Law*, Vol. I., pp. 31, 46, 221, and Vol. II., pp. 241-44.

² Brunner *Deutsche Rechtsgeschichte*.

³ Post *Bausteine für eine allgemeine Rechtswissenschaft*.

⁴ Pollock and Maitland *Hist. Eng. Law*, Vol. I, page 31: "A man's kindred are his avengers; and, as it is their right and honour to avenge him, so it is their duty to make amends for his misdeeds, or else maintain his cause in fight."

⁵ Not until 1819 was the last trace of the blood-feud eliminated from English law. This was effected by the *Appeal of Murder Act*, 59 Geo. III., cap. 46, which followed the extraordinary case of *Ashton v. Thornton* (1 Barn. and Ald., p. 405).

mode of appeal to heaven; in place of personal vengeance or specific redress were instituted elaborate scales of compensatory money-compositions. The kinsmen of the offender, or alleged offender,—it was all as one in early procedure—ceased to be allowed to guard him with their swords; but they were required to assist him with their oaths,—they became his “compurgators,” or oath-helpers. But all the same, if they failed in their oaths, or in fear of divine vengeance dared not make them, they remained, as in the days of the blood-feud when they were beaten in the battle, or when they declined to fight, responsible for their kinsman’s misdeeds.¹

(3) *Frankpledge*. As in the developing English polity the ties of kinship became loosened, so the range from which the compurgators might be chosen was widened. Kinsmen ceased to be necessary. Sometimes the court named a body of men from whom the required number could be picked: more generally the defendant was permitted to select them from the folk of his vicinage. The number required varied in curious and interesting ways. It varied on the one hand according to the offence, or rather according to the amount of the monetary compensation which the commission of the offence involved; the usual rate seems to have been one oath-helper of the rank of a *ceorl* (freeman) for each 5/- of fine.² Now a very common fine was 60/-, and therefore the normal number of compurgators of the rank of *ceorls* was twelve.³ But on the other hand it varied according to the rank of the oath-helper: the oath of one king’s thegn was equal in weight to the oaths of twelve *ceorls*. May we not see here an anticipation of the more fixed and permanent “pledge” system of later times—the lord’s pledge or mainpast in the one case, the frankpledge in the other?⁴ In the fully developed “pledge” system a man who is not *in plegio domini*, i.e. vouched for by a lord, shall be placed in a company of ten, or twelve, or more, permanent compurgators—a frithbohr, tithing, decena, frankpledge—whose members shall be mutually

¹ Pollock and Maitland *Hist. Eng. Law*, Vol. II., p. 600: “There are good reasons for believing that in the earliest period he had to find kinsmen as oath-helpers. When he was denying an accusation which, if not disproved, would have been cause for a blood-feud, his kinsmen had a lively interest in the suit, and naturally they were called upon to assist him in freeing himself and them from the consequences of the imputed crime.” Cf. Brunner *Deutsche Rechtsgeschichte*, Vol. II., p. 379.

² Chadwick *Studies on Anglo-Saxon Institutions*, pp. 144-6.

³ Chadwick *op. cit.*, p. 142, with numerous examples, p. 140. Pollock and Maitland *op. cit.*, II., 601. Brunner *op. cit.*, II., 384.

⁴ Cf. *Leg. Hen. I.*, viii., 2: “Communis quippe commodi provida dispensatione statutum est, ut a duodecimo aetatis suae anno et in hundredo sit et decima, vel plegio liberali, quisquis were, vel wite, vel jure liberi, dignus curat aestimari. Conductitii, vel solidarii, vel stipendarii dominorum plegio teneantur.”

responsible for one another's good behaviour, and shall be bound under oath and penalty to produce offenders for justice.¹

(4) *The Connecting Link.* The common element in the blood-feud group, the compurgators, and the tithing seems to be the existence of a body of men bound to defend a person accused of crime, or pledged to produce him in order that justice may be done upon him, or themselves compelled with him to bear the penalty of his offence. If this element in the tithing be borne in mind, if it be remembered that frankpledges are not so much witnesses as co-defendants, we shall then better understand the respective positions of the two bodies of presenters revealed to us by Britton, and Fleta, and other mediæval lawyers; we shall realise the necessity which led to the appointment of a jury of twelve men to enquire into the concealments of the chief-pledges; and we shall see how it was that in most villis and manors the chief-pledges were depressed into the position of mere parish-constables, yet still bearing evidence of their origin in that they were responsible for the production of offenders, and punishable for the concealment of offences. Under the frankpledge system—as under the older systems of kindred oath-helpers or feud-helpers—“to screen an offender would be, according to the social code, an act of good fellowship; according to the political code, remunerative. Thus two of the strongest motives by which human beings can be influenced were brought into action, not, as the lawgivers intended, for the repression of crime, but for the escape of the criminal.”²

CHAPTER XXXVIII.—EXTENSION OF ROYAL AUTHORITY.

§1.—Before the Norman Conquest.

“The Saxons had no kings at home,” says Bishop Stubbs, after a careful study of all available sources of information, “but they created kingdoms in Britain.”³ Thus in 449 Hengist and Horsa came as *heretogas* (war-leaders) to this island; but

¹ “The tithing consisted of ten men, who were collectively responsible for the good behaviour of every member. A crime perpetrated by any one of them rendered the whole liable to . . . a payment of goods or money.”—Pike *Hist. of Crime in England*, Vol. I., p. 58. The tithing sometimes contained twelve, sometimes even more, members. In the south of England, however, it commonly had no numerica^l connotation at all, but contained all the inhabitants of the vill, or of a ward of a borough. See Pollock and Maitland *Hist. Eng. Law*, Vol. I., pp. 588-571.

² Pike *Hist. of Crime in England*, Vol. I., p. 62.

³ Stubbs *Constit. Hist.*, Vol. I., p. 72.

in 455 Hengist was a king in Kent. Similarly, fifty years later, Cerdic and Cynric, when they led the West Saxon host to Hampshire, were *ealdormen*; having conquered the land, they established themselves as kings. The kingship, however, of these early English monarchs was both extensively and intensively a very petty affair. The kings were the heads of but small and fluctuating groups of predatory clans; they were little more than elected war-leaders, made permanent by the unbroken continuity of war, having an authority negligible in its impotence as to matters concerning the internal administration of clans other than their own. With the law and justice—that is, with the customs and the feuds—of the groups of communities which acknowledged their suzerainty they would not attempt, and probably would not have dreamed of attempting, to interfere.

But, as the generations passed, various causes tended both to consolidate the kingdoms and to enlarge the powers of their rulers. The kinship of the peoples in face of alien and hostile Britons, Picts, and Scots; the example and teaching of the Church; the pressure of Danish attack; the commanding ability of a long line of West Saxon monarchs—these and other influences brought England mediately or immediately under one ruler, and made it possible in the tenth century for Athelstan to style himself “*Rex Anglorum*,” and for Edgar to assume the high-sounding title of “*Totius Albionis Imperator*.” With the consolidation of the kingdom, moreover, went *pari passu* an increase of the royal dignity and an enlargement of the royal authority. The king came to be looked upon as the consecrated head of the race, the lord of the land, the supreme judge. In the sphere of law and justice, with which alone we are at present concerned, he grew strong enough to claim, if no more than claim, as his own, all the highest rights of jurisdiction. He was not strong enough, in many cases, actually to take them away from those who had exercised them from time immemorial; but it was a triumph of regal principle when the prince-bishops and secular lords came to him for charters to confirm what they had beforetime securely held either as their own, or as belonging to the community of which they were chiefs.

We can trace the development of the power of the king as the source of justice along four lines during the Anglo-Saxon period.

(1) *The King's Peace* spread outward from the royal palace

and its precincts, to which it had originally been confined, till it embraced, first, the great high roads and navigable rivers, and, finally, the whole land.¹

(2) *The Pleas of the Crown* began to be defined : that is to say, a list of offences began to be drawn up which the king insisted on, regarding not only as wrongs done to individuals, but also as crimes affecting himself as representative of the state. The list in Canute's day consisted of : breach of the king's protection, house-breaking, assault, neglect of military duty, and the harbouring of outlaws. The trial and punishment of these offences was usually reserved to royal officers, and the king claimed the fines and forfeitures. This marked an immense advance in the development of royal justice, even if the king could not in all cases make good his claim.²

(3) *The Sheriff*, a royal official, was established in the shire, side by side with the ealdorman, or communal official. The shiremoot became his court, and in his hands were placed the king's executive, financial, and military interests. It seems probable, too, that the "hundreders" in the hundred courts became his bailiffs, and, as I have already indicated, I am disposed to believe that long before the date of the *Assize of Clarendon* he himself visited each of his hundreds once or twice a year, to see personally that the frankpledge system was in working order, and to ask awkward questions of the tithingmen.

(4) *The Common Law* established itself as superior to the tribal laws—Kentish law, West Saxon law, Mercian law, Northumbria law, and Dane law—out of the elements of which it was derived.³

§2.—Norman Centralisation.

The Norman Conquest brought an immense access of strength to the central government. William the Conqueror, William Rufus, and Henry I. (the "Lion of Justice") were kings who ruled with a personal might, and a regal authority, such as England had never known before. They looked upon their kingship as less an elective office than a hereditary possession, and upon themselves as lords of the land as well as heads of the people. They eliminated, as far as they could, those elements of tribal

¹ For a more precise and detailed account of the history of the King's Peace, see Sir F. Pollock's brilliant sketch published in his *Oxford Lectures*. It was not till Edward I.'s time that the King's Peace became ubiquitous.

² Pollock and Maitland *Hist. Eng. Law*, II., 454-6.

³ Maitland *Justice and Police*, p. 32.

autonomy which had perpetuated themselves in the feudal system of government, as it had been developed under Edgar, Canute, and Edward the Confessor; and, except in the cases of the palatine counties of Durham and Chester, and the Welsh marcher lordships, they gathered the reins of administration into their own vigorous hands. They themselves restlessly patrolled the country, carrying law or war, according to circumstances, into every corner of their realm. Their *curia regis* was established as an instrument of unintermittent central control, and its members, the great officers of state, after the manner of the kings, and armed with royal warrants, made frequent perambulations.

But the permanent representatives of the successive kings throughout the counties of England were the *sheriffs*, Norman officials called by an English title, nominally successors of the sheriffs of the earlier period, but in reality exercising an immeasurably larger authority. For there ceased to be *ealdormen* at their sides to check them by appeals to venerable and semi-sacred tribal customs, or bishops to interpose the restrictive canons of the Church. The century 1066-1166 was in English local government pre-eminently the era of the sheriffs. For the sheriffs were the king's *fiscal* agents, holding the ferm of the shire, levying carucage, collecting judicial fines, exacting feudal dues, assessing scutage; they were the king's *military* agents summoning and commanding the fyrd; they were the king's *administrative* agents controlling the royal estates, holding the royal castles, keeping the king's peace, and (I am fain to believe) taking the view of frankpledge throughout the hundreds;¹ finally, they were the king's *judicial* agents holding all the pleas of the crown.

Nevertheless, in spite of the might of the sheriffs, and the jealous power of the kings whom they represented, there continued to persist throughout the land bishoprics and abbeys, earldoms and liberties, possessing, in virtue of immemorial custom long anteceding the days of charters or the establishment of the English monarchy, a justice almost, or wholly, regal in its magnitude.

Where, then, was leet jurisdiction at this time? It would be wrong to say that it did not exist; for the view of frankpledge

¹ I find it increasingly difficult to think that the *Assize of Clarendon*, in 1166, conferred any new power on the sheriff. I more and more clearly seem to see in this ordinance the beginning of restriction. Cf. above, pp. 66-69.

was certainly taken,¹ the assize of bread was assuredly enforced,² treasure-trove, waif and stray, and the other minor franchises were undoubtedly claimed by the king in theory, and enjoyed in practice by numerous lords. But, though leet jurisdiction thus existed in its constituent elements, these elements had not yet been grouped together as a body of *regalia* separate and apart—*visus franciplegii et omnia quæ ad visum pertinent*; they remained a series of isolated rights, each held by its own title. Moreover, in the case both of the sheriffs and of the stewards of the greater immunists, they were but the small dust of the balance of justice when compared with the high powers of life and limb, of forfeiture and waste, which these officers exercised. Leet jurisdiction had not, as such, emerged.

§3.—Angevin Reconstruction.

The feudal anarchy which devastated the country during the period when, in name, Stephen reigned, and when, in the current belief of the oppressed nation, "Christ and the saints slept," showed to Henry of Anjou, on his succession to the throne, two things, among others. The first was that, notwithstanding all the strenuous centralisation of the Norman Kings, a dangerously large number of immunists existed, with perilously vast powers: the second was that the sheriffs on the one hand had wholly failed, under Stephen, to keep the peace, and on the other hand were themselves tending to convert the shires, within which they held office, into hereditary feudal fiefs. Seeing these things, Henry II. began his great work of reconstruction. To break down the barriers of the immunists he sent round from the *curia regis* his itinerant judges, to whose courts all were to be bound to come,³ and to whose justice were to be reserved (from 1166) all robbers, murderers and thieves, and (from 1176) all forgers, incendiaries and traitors, wheresoever their crimes had been committed. To reduce the sheriffs to their proper position of nominated officials, not only did the resolute king authorise these itinerant judges to take over from them the presidency of their chief courts, and to administer justice in respect of the most important pleas of the crown, he also instituted a special *Inquest of Sheriffs* in 1170, the findings of which he made the

¹ Cf. *Leg. Hen. I.*, cap. viii., in Stubbs *Select Charters*, p. 105.

² Cf. a twelfth century ordinance in Cunningham *Growth of English Industry and Commerce*, Vol. I., Appendix A.

³ "Vult etiam dominus rex quod omnes veniant ad comitatus . . . ita quod nullus remaneat pro libertate aliqua quam habent vel curia vel eoca quam habuerit." *Assise de Clarendon*, cap. 8.

ground for the dismissal of the majority of these officers, whose nascent efforts to secure hereditary succession were thus nipped in the bud. Moreover, further to increase the control of the *curia regis* over the local courts, Henry II. developed the "writ process," by means of which he and his successors were able, not only to regulate the proceedings in these courts, but also to call cases from them to the royal tribunals.¹

The attack upon the sheriffs thus energetically begun by Henry II. was continued by his successors. From the *fiscal* exactions of the sheriffs many boroughs secured exemption by charter, while both the assessment and the collection of taxes passed into other hands. The *military* importance of the sheriffs diminished with the decline of the fyrd, and with the substitution of scutage for knight service; and when the *Statute of Winchester* (1285) reorganised the national defence, it was to constables and not to the sheriffs that the new duties were assigned.² Simultaneously, as we have already seen,³ his judicial authority was diminished. The "keeping" of the pleas of the crown was transferred to coroners in 1194; while in 1215, by *Magna Carta*, the process begun by the *Assize of Clarendon* was completed, and sheriffs were definitely forbidden to "hold" the pleas of the crown, that is, broadly speaking, forbidden to try any offence committed "*contra pacem domini regis*." This date then—the date of *Magna Carta*—marks an era in the history of local as of national administration. The greater powers of justice were at last distinguished from the smaller, and were placed in different hands. Leet jurisdiction was, at any rate in its broad general outline, defined.

This same era of Angevin reconstruction saw, moreover, the introduction into the shire and hundred courts of the jury system of sworn inquests; but concerning that, and the conflict between the chief-pledges (interested to conceal) and the jurors (pledged to find out) enough has already been said.⁴

1 The following writs—not all of them, of course, in use in Henry II.'s time—were specially important in controlling or limiting local jurisdiction:—*Præcipe*, *Justices*, *Pone*, *Certiorari*, *Error*, *Mandamus*, *Quo Warranto*. (See Holdsworth *Hist. Eng. Law*, Vol. I., Appendix). It was against the free and frequent use of the first of these that the feudal lords protested in *Magna Carta*, 1215 (§ 34): "*Breve quod vocatur præcipe de cetero non fiat allien de aliquo tenemento unde liber homo ampliter possit curiam suam*." (See McKechnie *Magna Carta*, pp. 14, 104, 405-13). The form of the writ *præcipe* as instituted and employed by Henry II. is given by Glanville, I., § 8. Cf. also Stubbs *Const. Hist.*, I., 576.

2 "En chescun hundred e fraunchise seyent eleus deus constables a fere le veue des armes."

3 See above, pp. 94-96.

4 See above, pp. 68-71, and pp. 86-87.

CHAPTER XXXIX.—DEFINITION OF LEET JURISDICTION.

§1.—The Position after *Magna Carta*.

With the signing of *Magna Carta* by John in 1215 leet jurisdiction came into existence. It was the jurisdiction left by the great charter to the sheriff in his tourn. On the one hand it was divided from the higher jurisdiction of the king's courts by § 24 of the charter, which said that no sheriff should hold the pleas of the crown.¹ On the other hand it was marked off from the ordinary civil jurisdiction of the three-weekly hundred court by § 42 of the charter (as re-issued in 1217), which said that no sheriff should make his tourn oftener than twice a year.² But, though thus in existence, it was throughout the thirteenth century without form and void, a floating nebula in the legal firmament, nameless and fluctuating, torn by the mutually-hostile attractions of greater and lesser lights, waiting the fiat of a *jure divino* king to reduce it from gaseous chaos to solidity and order.

If gaseous, however, it was none the less golden; an auriferous vapour, portions of which could, when secured, be readily condensed into cash. The juridical powers of the sheriff as left by *Magna Carta* were, though petty, profitable. In the sheriff's hands they formed a not-inconsiderable part of the ferm of the county.³ In private hands they provided an important item of the lord's income, and one capable of indefinite expansion. It was lucrative to hold a view of frankpledge; to take a fee from all who did enrol themselves,⁴ and a fine from all who did not. It was lucrative to amerce defaulting bakers, brewers, butchers, curriers, and the rest. It was lucrative to have treasure-trove, waif and stray, and felons' goods. It was lucrative to mulct all persons accused of all offences against the community. In short, a greedy lord, with an unscrupulous steward, and a collusive jury consisting of men of the moral

¹ Stubbs *Select Charters*, p. 300.

² Stubbs, *op. cit.*, p. 346.

³ See a notable petition of the commons entered in *Rotuli Parliamentorum* under date 45 Ed. III. (A.D. 1371). It is to the effect that in ancient times all the counties of England were assessed at a certain ferm, and that all the hundreds, wapentakes, and leets in the hands of the sheriffs contributed to that ferm. But the kings have granted and given them away, to the great damage of the ferm. The commons therefore pray that the grants may be resumed, and the said hundreds, wapentakes, and leets "rejoyned as ditz countees." The king's reply is the cautious "Wait to the next parliament." *Rot. Parl.*, II., 306.

⁴ Cf. notes on *Leicester*, above, pp. 280-81.

calibre of Judas and yet legally capable of giving verdicts of evangelical validity, had the whole of a vicinage at his mercy, that is, to use the technical Latin term, *in misericordia*.¹ Mediæval leet jurisdiction was, in fact, whether it was administered by a just sheriff or an unjust steward, regarded primarily as a source of emolument; as such it was sought, and as such assessed.²

The reign of Henry III. was a period of conflict in the judicial sphere between the centralized organisation of courts royal as established by Henry II., and as maintained by the justiciars of Richard I. and John, and the older system of communal and seignorial "justice at home" (as Whitelocke in after days euphemistically described it³), the declining strength of which had been revived by the baronial triumph of 1215. Neither the barons of Stephen Langton, nor the barons of Simon de Montfort, were wholly the disinterested patriots they are sometimes supposed to have been, and in their hostility to royal justice, as in their antagonism to trial by jury, they were distinctly reactionary and retrogressive. They were willing enough to reduce the sheriff's tourn to impotence and insignificance, which they did by securing from John the removal of all important cases from it, and by demanding and obtaining from the weak and broken Henry III. the exemption of all important persons from attendance.⁴ But they snatched its lucrative jurisdiction with both hands for themselves, and with it built up new seignorial immunities. Of this the *quo warranto* rolls bear eloquent testimony.

§2.—The Quo Warranto Proceedings.

When Edward I., having returned from the Holy Land, two years after the death of his father took up the reins of government, he found himself the lord of a land in which royal justice was weaker, seignorial immunity stronger and more general, than they had been one hundred years before. He set himself

¹ Cf. *Rot. Parl.* I., 293 (A.D. 1314), quoted above, p. 151, note 1.

² Two examples occur to me. (1) *Rot. Parl.* II., 207 (A.D. 1347), shows that the people of Lynn had purchased the right to hold the leet of their town for two marks (£1⁶/₈) a year, and had subsequently sold it to the bishop of Norwich. (2) An *Inquest post Mortem* of the Earl of Leicester in 1327 gives among the assets of the deceased nobleman "a certain view of frankpledge twice a year worth £6¹³/₄" (*Bateson Records of Leicester*, I., xxv.). The dominant financial aspect of mediæval jurisdiction is excellently stated by Sir Frederick Pollock when he says: "Competition for business and fees between independent or half independent powers is the key . . . to much of the legal history of the middle ages" (*Oxford Lectures*, pp. 83-84).

³ See above, page 153, note 1.

⁴ *Statute of Marlborough*, 1267: see above, p. 85.

with vigour to the task of restoring, resuming, and completing the work of Henry II. He had two powerful allies in the revived Roman law and the rapidly developing Canon law, both of which, widely as they differed in many respects, agreed in this, that justice did not rise from local springs, but flowed from one high central source. Thus legal theory came to the aid of practical policy. Edward began his task almost immediately after his return by sending commissioners round the country to make strict enquiry into the nature of the immunities actually in existence. The shocking results of this enquiry were embodied in the *Hundred Rolls*. These completed, extracts were made from them for the use of the itinerant justices; the *Statute of Gloucester* was passed (1278), conferring special powers upon the judges, and at once they began their eyre and instituted extensive *quo warranto* proceedings. In these proceedings the royal officers maintained extremely advanced positions. They contended that all justice emanated from the king; that no franchise, such as *visus franciplegii*, could be rightfully held without express royal grant; that all Anglo-Saxon grants lapsed at the Conquest; that all subsequent grants were valid, apart from specific renewal, only during the reign of the king who made them; that long-time possession of franchises without authority of charter, so far from conferring prescriptive title, aggravated the offence of usurpation, for *nullum tempus occurrit regi*.¹ It is plain that these principles, if strictly applied, would have swept away not only the petty thirteenth-century usurpations of the barons, but also all those vaster immunities of bishopric, and abbacy, and palatinate earldom, whose foundation in some cases antedated the foundation of the monarchy itself. The king was asking for more than he was able to get; his officers were taking up positions too advanced for permanent occupation at that stage of the battle. The opposition of the magnates was roused; the Earl of Arundel, when asked for a charter, produced a sword. The king made a truce on the basis of a compromise. He had to content himself with stopping further usurpations, and with demanding express warrant for all franchises established within the preceding hundred years. If, therefore, after the date of this Gloucester composition of 1290,² any person claimed to enjoy the judicial immunities which were regarded as *regalia*,

¹ See Pollock and Maitland *Hist. Eng. Law*, I, 572-4; Holdsworth *Hist. Eng. Law*, I, 47-49; Maitland *Select Pleas*, xx-xxii.

² 18 Ed. I., stat. 3 and 3.

he had to show either that he had enjoyed them from before the accession of Richard I. (1189), or that he had received them by subsequent charter.

Just, then, as *Magna Carta* separated in judicial fact high justice from low justice, giving the one to the king's courts, leaving the other to the sheriff's tourn, so did the *Placita Quo Warranto* separate in legal theory the "leet" rights of jurisdiction exercised in the seignorial courts by virtue of direct royal concession, from the feudal or "baronial" rights which, whatever their ultimate origin, flowed immediately from tenure. Thus they stamped as essentially distinct, two groups of rights which had been marked off from one another in *Magna Carta* only by the external facts that the one was exercised twice a year by the sheriff on tourn, while the other was exercised every few weeks by the hundreder at home.

§3.—The Labours of the Late-Mediæval Lawyers.

It was, however, one thing to state a legal theory, but quite another to get it recognised in practice. The new principles conflicted hopelessly with the ancient customs of the local courts, and the ancient customs were extremely intractable and persistent. The mediæval "great court" of hundred, or borough, or manor, was, as we have had to note on many occasions, an entirely undifferentiated court exercising quite indiscriminately both "leet" and "baronial" functions. There are, further, numerous indications that at one time the "little courts," *i.e.*, the ordinary three-weekly or monthly courts, did not confine themselves strictly to "baronial" business. For example, as we have already seen,¹ in Leicester the portmanmoot exercised leet functions thirty-four times in the year, 2-3 Ric. II. Again, the *Rolls of Parliament* of the same period, *viz.*, 50 Ed. III., show us the bailiffs of the hundred of Gostelyng, in Sussex, compelling the poor people to attend every three weeks by colour of presentments; wherefore the commons petition that "les grandes wapentakes et les hundreds" may be held twice a year only, according to statute.² Finally, Wilkinson asserts categorically—and I am disposed to think that by accident he is this time not far from right—that at one time³ "a lord of a leete or lawday might have kept as many

¹ See above, pp. 280-81.

² *Rot. Parl.*, II., 357.

³ Wilkinson says before 1267, but he probably means 1317.

leets or lawdays in a yeere as hee would, and as few."¹ We cannot, of course, suppose that the formal view of frankpledge itself was ever taken much oftener than twice a year; to have taken it oftener would have been to waste time. But, equally, we cannot suppose that in the palmy days of "justice at home," the lords of great franchises would have felt themselves restrained from dealing with assaults and affrays, with public nuisances and evil persons, oftener than once every six months. It can, indeed, scarcely have been possible to enforce such a restriction until the establishment of justices of the peace made leet jurisdiction an anachronism. If that be so, the definition of leet jurisdiction by Edward I. marks the beginning of its destruction.

What, then, did the Edwardian lawyers do, or try to do? Be it said at once that I can see no trace of evidence, either in legal theory or in historic fact, that either they or their mediæval successors ever tried to differentiate the "great court" of hundred, borough, or manor; that is to say, ever tried to take from it its "baronial" functions, and convert it into a "court leet" pure and simple. If they had really tried, they could hardly have failed to effect the differentiation so signally as all the early records show they did fail. But I am persuaded that they never tried. What they were concerned to do was *not* to prevent the six-monthly "great court" from transacting the business of a court baron; but to prevent the three-weekly "little court" from transacting the business of a court leet. In other words, they were determined to apply to the seignorial courts the regulations of *Magna Carta* respecting the sheriff's tourn, *i.e.*, to limit the leet sessions to two a year. One of the very first cases in the *Year Books* illustrates this. In 1293 a man presented in a manorial leet for an encroachment was ordered to appear at the next court. Accordingly, it would seem, he came to the ordinary court a few weeks later and was amerced. But the king's court, on appeal, set aside the penalty, because "yl ne dut respundre a curt de baron de purpresture presente a la lettre ky est plus aut court."² The lawyers' efforts to restrict the number of leet sessions of seignorial courts were very generally successful. Two a year became the rule. But they were never able to eliminate all exceptions. In the palatine bishopric of Durham (in which, of course, the king's writs did not run till 1536) the steward of the prior made three tourns every

¹ Wilkinson *Court Leet, etc.* (1638), p. 112.

² *Year Book*, 21-22 Ed. I. Rolls Series, Vol. I., p. 109.

year, viz., one in early spring, one in summer, one in autumn;¹ and in other cases it had to be acknowledged that "a leet by prescription may be held oftener than twice a year."²

But, further, the lawyers were bent on other things besides the effecting of such differentiation of courts as was involved in the limitation of the exercise of leet jurisdiction to two occasions a year. They continued without intermission their *quo warranto* proceedings, jealously preventing the further extension of seignorial franchises, and extinguishing such franchises where possible.

Further, they struggled to fix and to purify the judicial procedure of the leets, and so to lessen the danger to liberty and property which sprang from the irresponsibility of the sheriffs and stewards, the depravity of the jurors, and the untraversability of their verdicts. In this, as we have already seen,³ legislators came to their aid and placed on the statute book acts diminishing the powers of sheriffs and stewards, determining the numbers of jurors required for a valid indictment, introducing a method of procedure by "roll indented," and fixing a property qualification for membership of a jury.

Perhaps, however, the matter to which the lawyers devoted most attention was the restriction of the sphere of leet jurisdiction. The rules which they laid down to this end have already been fully stated.⁴ It will, therefore, suffice to repeat that on the one hand they prohibited the leets from taking cognisance of any breach of statute law, except under express statutory permission, while on the other hand they excluded them from the whole domain of private law. Thus before the end of the middle ages leet jurisdiction had been effectively confined to petty common-law misdemeanours and trivial public nuisances. That it was possible thus to reduce the power and authority of sheriffs' tourn and stewards' "great court" was due to the fact that a more efficient instrument of local justice and police was being established and brought into operation throughout England. Just as common law was being superseded by statute law; frankpledges by constables; juries of presentment by juries of trial; so were leets being ousted by petty and quarter sessions, and sheriffs and stewards displaced by justices of the peace.

¹ *Halmota Prioratus Dunelm* (Surtees Society), p. xli.

² Cf. cases of *Edwards v. Hughes*, *Morgan*, *Partridge*, *E. v. Jennings*.

³ See above, p. 103, where the provisions of the four statutes 13 Ed. I., cap. 13; 1 Ed. III., cap. 17; 1 Ed. IV., cap. 2; and 1 Ric. III., cap. 4, are summarised.

⁴ See above, Chap. X.

§4.—The Justices of the Peace.

A word or two, though no more, must be said, in closing this chapter, concerning that supplanter of the sheriff and the steward, the justice of the peace.

From the Norman Conquest to Henry II.'s time the sheriff had (except in the great franchises) held and administered criminal justice. His rule had been both ineffective and oppressive, and dissatisfaction had become general. Henry II. tried to remedy matters by associating the itinerant justices with the sheriffs in great cases. But the itinerant justices were but occasional visitors; and what was wanted was "justice at home." Hence in 1194, if not earlier, coroners were appointed—apparently by election in the county court—to keep the pleas of the crown. Their original duties were (1) to hold inquests; (2) to apprehend the guilty; (3) to look after deodands, wreck, treasure trove, and other royal perquisites; and (4) to take appeals and hear criminal accusations which would be tried by the itinerant justices. The coroners, however, did not prosper in their judicial capacity, probably because they were elective: *Magna Carta* forbade them to hold pleas of the crown.

Seventy years later, by the *Statute of Winchester*, Edward I.'s great police act of 1285, "justices" were instituted to assist in the presentment of breaches of its provisions.¹ They were, however, distinctly subordinate to the sheriff. In 1327 a statute² enacted that in every county good men and lawful should be assigned to keep the peace; but these *conservatores pacis*, as they were termed, were purely administrative officers with very limited authority. Three years later³ they gained power to receive indictments and to detain those indicted till such time as the judges of gaol delivery should come round. In 1345 the first purely judicial functions were assigned to them; they were authorised to hear and determine felonies and trespass.⁴ In 1352 they were directed to hold their sessions four times a year.⁵ It was, however, an act of 1360 that established them as a permanent institution, determined their mode of appointment by the lord chancellor, assigned a separate commission to each county, and defined their qualifications and powers.⁶ A supplementary act of 1362 first called them officially by the now-familiar title "justices of the peace."⁷ The immediate effect of the new officials upon the old

1 13 Ed. I., stat. II., cap. 6, § 13.

3 4 Ed. III., cap. 2.

5 25 Ed. III., stat. I., cap. 7.

7 36 Ed. III., stat. I., cap. 12.

9 1 Ed. III., stat. 2, § 16.

4 18 Ed. III., stat. II., cap. 2.

6 34 Ed. III., cap. 1.

courts is clearly indicated by a petition which was presented to the king in 1376: "The commons pray their lord the king that no justice of the peace (*justice de la pees*) shall make enquiry of anything which comes within the jurisdiction of lords who have the view of frankpledge." The king's reply is significant; it shows the close connection between the justices and statute law (as contrasted with the connection between sheriffs and stewards and the common law): "The statutes made up to this present could not be enforced if this request were granted."¹

Thus it was that, while sheriffs and stewards decreased, the justices increased, until in their hands was established "a form of subordinate government for the tranquillity and quiet of the realm as no part of the Christian world hath the like."²

CHAPTER XL.—THE AGE OF THE COURTS LEET.

§1.—The Standardisation of Leet Jurisdiction.

The end of the fifteenth century—which witnessed the establishment of the strong Tudor monarchy, the founding of the court of the Star Chamber, and the suppression of livery and maintenance—saw the final triumph of the crown over feudalism, the complete victory of justice from Westminster over justice from the baronial hall or the manor house.

The theory of leet jurisdiction was by that time fully elaborated. Statutes of the realm, judgments of the supreme courts, treatises of lawyers, stewards' guides, had between them stated categorically and authoritatively that leet jurisdiction was originally derived from the king; that it could be held by a subject only in virtue of a royal grant, or by prescription which implied a royal grant; and that the court in which it was exercised was co-ordinate with, and subject to all the limitations of, the sheriff's tourn. Moreover, the same authorities had, after long vacillation, come to substantial agreement as to (1) the "articles of the leet" which defined the narrowed scope of the jurisdiction of the court, (2) the modes of procedure proper

¹ *Rot. Parl.*, II., 386.

² *Coke 4th Institute*, p. 170.

to the court, and (3) the means by which it could lawfully enforce its judgments. In a word, leet jurisdiction was "standardised."

Simultaneous with the development of legal theory, there had been in the region of practice a vigorous onslaught upon seignorial franchises, carried out by means of the effective weapons of forfeiture, *quo warranto*, and writ, supplemented in the last resort by act of parliament. These legal and legislative weapons of precision did for baronial immunities what the new artillery and the art of mining did for baronial castles—brought them "with hideous ruin and combustion" down. The final catastrophe came in 1536, when Henry VIII., having a submissive parliament, and being successfully engaged in his titanic conflict with the Church,¹ resolved to make an end of the other formidable rival to his royal supremacy, viz., the great immunists. Accordingly, he secured from parliament "an Acte for recontynuyng certayne liberties and franchises heretofore taken from the Crowne,"² which absorbed even the counties palatine into the national system. At the same time "an Acte for Lawes and Justice to be ministred in Wales in like fourme as it is in this Realme"³ did the same for the 137 Welsh marcher lordships which then existed.⁴ The king was at last lord of his kingdom, in all causes, whether civil or ecclesiastical, supreme. The towering ramparts of seignorial immunity had at length, after ages of conflict, been battered down to the level of, and the innocent nature of, the wall of a garden allotment, a plot held on lease from the king, wherein the *parva regalia* of the leet could be cultivated and enjoyed.⁵

§2.—The Materialisation of Leet Jurisdiction into the Court Leet.

But not only was seignorial jurisdiction standardised to uniformity and comparative insignificance; it was, in the process, materialised. The leet, from being a collection of rights, became, in legal theory, a court. It is easy to discern the influence which led to that result. We have seen that, though apparently the mediæval lawyers made no effort to disintegrate

¹ 1536 was, it will be remembered, the year in which the majority of the monasteries were dissolved.

² 27 Hen. VIII., cap. 24.

³ 37 Hen. VIII., c. 26.

⁴ In 1543 the whole judicial system of Wales was re-organised on a royal basis by 34-35 Hen. VIII., cap. 26: "An Acte for certayne Ordinaunces in the Kinges Majesties Domyinion and Principalltie of Wales."

⁵ For a short but admirable account of the courts of the franchisees, see Holdsworth *Hist. Eng. Law*, Vol. I., pp. 47-64.

the "great court" of franchise, or borough, or manor—that is, made no effort to prevent it from performing indifferently both leet and "baronial" functions—yet they *did* strive, and strive successfully, to prevent the "little court" from performing leet functions. One might perhaps express this distinction by saying that they were not at all concerned to distinguish the *court leet* from the court baron; but were very seriously concerned to distinguish the *court baron* from the court leet. The fact that the one met every three or four weeks, while the other met only twice a year, naturally, if not necessarily, led to the consequence that a distinction which was primarily one of function came to be regarded as one of substance. The "little court" or "court baron" *had*, as a matter of fact, material form; was, indeed, a concrete reality. It was the ordinary court of the manor. Its distinguishing characteristics, apart from the frequency of its meetings, were that it was incident to every manor which had as many as two freeholders, that the suitors were judges, that the jury might be less than twelve. It was an easy transition, therefore, to come to regard the leet not as merely a body of additional functions exercised by this court twice a year, but as a separate court. There were supposed differences of origin; there were real and important differences of constitution and procedure.¹ In spite of this, however, it must never be forgotten by those who study these difficult matters of early legal history, that whereas the court baron was a concrete reality, the court leet was—and, strictly, always remained—but a legal fiction. The "great court," or the "lawday," or the "*curia cum visu francipledgi*," was a court baron *and*, or *with*, a leet. As, however, seignorial jurisdiction decayed throughout England, it may have happened in various places, as it did happen in Manchester, that the "baronial" functions died out altogether, or else were formally separated, so that a "court leet" pure and simple (*i.e.*, a court exercising leet functions only) was revealed. But very generally—one may say almost universally—when a court called a "court leet" is found, it is seen to exercise functions which bear record of its older undifferentiated days.²

¹ See above, p. 78.

² As I go to press Mr. G. G. Alexander opportunely sends the following interesting note:—"In the very recent case of *Chesterfield (Lord) v. Harris* (1908), 1 Ch., 230, a case about fishing rights within the limits of the manor of Wormelow, in Herefordshire, Neville, J., in his judgment, at the bottom of p. 239, says:—"It will be observed that the extract from the roll of 14th Charles I. speaks of the *great court leet* of the Most Noble Henry, Earl of Kent, and Elizabeth, Countess of Kent, his wife, *of the*

§3.—The Exploitation of the Court Leet.

It says volumes for the completeness of the triumph of the monarchy over feudalism, of royal justice over seignorial immunity, at the beginning of the sixteenth century, that scarcely was the process of the humiliation and standardisation of seignorial jurisdiction concluded, scarcely had the clearly-defined body of leet rights been materialised into a court, when the king was able to use the humiliated stewards as his agents, and the standardised leets as the instruments of his will. The oldest of the courts of the land acknowledged themselves to be derived out of their successors and supplanters; the formidable rivals of ancient kings humbly and submissively took up the position of the obedient servants of the heirs of their old enemies. One is reminded of Lambert Simnel, who, having been defeated, thwarted in his efforts after a crown, and captured, was usefully employed as a scullion in the victor's kitchen.

The inquisitorial machinery of the leets was, in truth, eminently serviceable to the kings when they were strong enough to work it to their own purposes. The justices of the peace could punish offenders, when found, well enough; but they had no very effective means of finding them. Hence, as we have already noted, the sixteenth and early seventeenth centuries saw the leets revived in a new capacity, re-invigorated to perform a new series of duties, viz., to enforce a long list of novel statutory obligations. The details need not here be repeated.¹ It is sufficient to note that the result was a new lease of life to leet jurisdiction.

Finally, apart altogether from jurisdiction, there were many services to which king, manorial lords, and commonalty could in turn put a court which was a regular, compulsory meeting of all the residents. The king could order proclamations and statutes to be promulgated;² the manorial lord could announce matters of general interest to his tenantry; but, above all, the community could conduct its elections. A glance through the notes on the courts leet of England and Wales, given above in Chapter XXXIV., will show how frequently these elective

manor or hundred. It seems probable that the courts leet and baron in this hundred or manor of Wormelow were held together, and the higher title is not unnaturally adopted. This supports your view that there was anciently only one court in the hundred or manor, and the date is very late. *viz.*, 1640."

¹ See above, Chap. XIII.

² Cf. the *Riot Act* of 1715 and the *Turnpike Act* of 1737.

functions of the "great court" (or by-functions of the leet) survived long after all the true leet powers had vanished.

There is plenty of evidence, however, that in the seventeenth century these true leet powers had by no means disappeared. First, there is the evidence of the frequent publication of new editions of the court keepers' guides. Secondly, there is the evidence of the court rolls which, from places widely scattered, show signs of the continued existence of serious activity. Thirdly, there is the evidence of the law reports, which reveal a constant and turgid flood of leet litigation. Finally, there is direct historic record, of which I will give, by way of conclusion, two examples:—

(1) Some *Orders in Council* of 1630 direct that "stewards to lords and gentlemen, in keeping their leets twice a year, do specially inquire upon those articles that tend to the reformation or punishment of common offences and abuses: as of bakers and brewers for breaking of assizes, of forestallers and regraters; against tradesmen of all sorts for selling with under weights, or at excessive prices, or things unwholesome, or things made in deceit. Of people, breakers of houses; common thieves and their receivers; haunters of taverns or alehouses; those that go in good clothes and fare well and none know whereof they live; those that be night walkers; builders of cottages and takers in of inmates; offences of victuallers, artificers, workmen, and labourers. That the petty constables in all parishes be chosen of the abler sort of parishioners, and the office not to be put upon the poorer sort, if it may be, watching in the night and warding by day, and to be appointed in every town and village for apprehension of rogues and vagabonds and for safety and good order."¹

(2) The court leet was transplanted to the American colonies, where, vainly struggling to maintain its seignorial character, and strangely developing in the soil of freedom, it became, when it survived at all, the general assembly of the self-governing community of the colonial township. The two colonies concerning which the evidence is clearest are Maryland and New York. Lord Baltimore modelled his colony of Maryland on the palatinate of Durham. In 1636 he issued instructions to the governor that every 2,000 acres granted to any settler should be "erected and created into a manor," with "a court baron

¹ *MS. Register, Privy Council, 1631, Orders and Directions, together with a Commission for the Better Administration of Justice, 1630*; quoted by Webb *Local Gov.*

and court leet, to be from time to time held." That these instructions did not remain wholly a dead letter is shown by scanty, but incontestable, evidence. For example, there are records of courts leet held in the manor of St. Clement's in St. Mary's county at intervals from 1659 to 1672. The "manors" of New York were of Dutch origin. But after the English conquest of 1665 they were remodelled on the English plan. Thus in 1685 the Livingstone manor received authority to establish "one court leet and one court baron . . . to be kept by the said Robert Livingstone his heirs and assigns for ever." But not "for ever" was America willing to retain the dying relics of seignorial immunity.¹

CHAPTER XLI.—THE OLD ORDER CHANGETH.

§1.—Eighteenth and Nineteenth Century Survivals.

The great rebellion of the seventeenth century gave a rude, though not a fatal, shock to seignorial immunity, as it did to so many other survivals of feudal and pre-feudal organisation. During the Commonwealth period, in fact, when all institutions were in the melting pot, there had not been wanting powerful advocates of the policy of the entire abolition of judicial *privilegia*.² Nevertheless, they were not abolished, and, even where there was temporary suspension, there was subsequently, under the restored monarchy, a general revival, followed, in many cases, by a long career of activity, though activity somewhat debilitated and senile in its character. The nature of this revival will not, however, be properly understood unless we get behind names to facts. The court which most commonly succeeded in struggling through and surviving the fiery ordeal of the Puritan régime was the half-yearly or yearly "great court" of manor, borough, or franchise. Now, on the one hand, this "great court" was an undifferentiated court, which, in its prosperous days, had (1) exercised the criminal jurisdic-

¹ Hannis Taylor *English Constit.*, Vol. I., pp. 32-35.

² For example, in 1659, the anonymous author of a book entitled *Chaos*—a book dealing with schemes of constitutional reform—urged that "all lords of manors keeping constant courts baron and courts leet, or either of them, shall discontinue the same."

tion of the leet, (2) decided the civil disputes regarded as proper to the court baron, (3) dealt with the customary business of copyhold conveyancing, (4) seen to the election of numerous officials, (5) given publicity to parliamentary statutes, royal proclamations, and seignorial ordinances. But, on the other hand, it had frequently acquired the narrow and inexact title of the "court leet"—a title which connoted only a fraction, even if originally the most important and distinctive fraction, of its functions. Now this "great court," thus misnamed the "court leet," did not in many cases succeed in carrying into and through the eighteenth century *all* its functions unimpaired. In hosts of cases, of course, it carried none; but, where all, and with them the court itself, were not extinguished, it was here one, there another, which survived. For instance, at Bewdley and Leeds only the conveyancing business remained; at Bradford and Tweedmouth the collecting of small debts continued as a leading duty; at an immense number of places, such as Aberavon,¹ the court met merely for elective purposes; at one or two only, of which Manchester furnishes the most nearly perfect example, did the leet functions outlast the rest. But all the courts alike kept the name of "court leet," which—never strictly correct, because never comprehensive enough—thus became, in not a few cases, a simple misnomer.

It was, indeed, precisely the leet functions of the "great courts" which were, in the eighteenth century (as in the earlier periods), viewed with the most active dislike by legislators, lawyers, justices, and commonalty. Statutes not only ceased to confer fresh duties; they silently, but steadily, curtailed the common-law powers of the leet by covering almost the whole ground of the common law with specific enactments.² Judges, such as Sir Matthew Hale, spoke and wrote of leet jurisdiction with the bitterest animosity, and, whenever they could, inclined the scale of appellate justice to the side of restrictive severity.³ Lawyers, such as Blackstone, treated the leet as a languishing anachronism.⁴ Only here and there a devoted steward, like Ritson, spoke up on behalf of

¹ For many other examples, see above, Chapter XXXIV.

² Cf. the case of *Colebrook v. Elliott*, in which an amercement in a leet in respect of a short-weight loaf was declared invalid by the King's Bench, on the ground that the baker's fault was an offence not under the old assize, but under the statute 3 George III., cap. 11.

³ Cf. the opening pages of *The Power and Practice of the Court Leet of the City and Liberty of Westminster* (1743).

⁴ Cf. Blackstone *Commentaries*, Book IV., Chap. 19:—"Both tourn and leet have been for a long time in a declining way."

"this most ancient and respectable tribunal,"¹ enlarged on its "peculiar excellences," lamented its decline, and tried to restore it by claiming for it all, and even more than all, its mediæval powers.

§2.—Sources of Vitality.

That the leet had, together with its obvious and fatal defects, some "peculiar excellences," may be readily conceded to the shade of Ritson. We may, perhaps, if we are in a generous mood, put them first in our enumeration of the sources of the long-continued vitality of this venerable jurisdiction.

(1) *The Excellences of Leet Jurisdiction.* First and foremost among the advantages of leet jurisdiction was the fact that, whatever the quality of the justice provided, it was "*justice at home*"; the neighbours were the assessors, the court was close at hand, no rumour of its transactions reached the outer world. Secondly, it was *common-sense* justice; there was an attractive absence of formality, of appeal to precedents, of technical language, of legal uncertainty and perversity; it dealt in law that was intelligible and not obtrusively, to rustic minds, "an ass." Thirdly, it was *cheap* justice; "the proceedings of the leet," boasts Ritson, "are without expense, the suitor pays no fees, and advocates or attorneys of course never enter it." Fourthly, it was *prompt and summary* justice; it settled matters out of hand, obviating the law's delays and precluding tedious litigation concerning trifles. Fifthly, it was *comprehensive* justice, which, though limited to petty matters, was, within its limits, usefully undefined; so that it was able to deal with "what is usually called everybody's business and nobody's business," and to stop annoyances of which the higher courts could doubtfully have taken cognisance.² These, taken together, were advantages which, to some extent, counter-balanced the disadvantages which flowed from the infrequency of the leet sessions, the obsolescence of the leet procedure, and the excessive powers of petty tyranny possessed by the leet jurors.

(2) *The Profit and Dignity of Leet Jurisdiction.* Such vitality, however, as the leet had in the eighteenth and nineteenth centuries was due not so much to excellences which appealed to the commonalty, as to the profit or the dignity which it

¹ Ritson *Jurisdiction of the Court Leet* (2nd Ed.), p. xx.

² Ritson *op. cit.*, p. xx., and *Manchester Court Leet Records*, Vol. IX., p. 243.

conferred on the lords. Leet jurisdiction had been desired in mediæval times mainly as a source of income; it was as a source of income that, in some places, it was exercised in its latest days.¹ These cases, however, were exceptional. But, in countless instances, where the actual pecuniary value of the amercements was small, the leet was continued because it conserved the vanishing idea of seignorial dignity, because it raised the lord of a manor to a rank higher than a mere landlord, and enabled him to retain some relic of the benevolent pride which belongs to the patriarchal chief. Where the lord had to provide the leet dinner, the dignity of lordship must generally have exceeded the monetary gain. The fact, moreover, that the leet was regarded as a property, or as appendant to property—as something in which the lord had a vested interest—made the legislature very cautious in interfering with it. Even when, in 1887, the parliament abolished the sheriff's tourn, it was careful to add:—"Notwithstanding the repeal of any enactment by this Act, every court leet, court baron, law-day, view of frankpledge or other like court which is held at the passing of this Act shall continue to be held on the days and in the places heretofore accustomed, but shall not have any larger powers, nor shall any larger fees be taken thereat than heretofore, and any indictment or presentment found at such a court shall be dealt with in like manner as heretofore."²

§3.—Causes of Decay.

When the *Sheriffs Act* was passed in 1887, however, there were very few "courts leet" remaining in existence, and of these only a small fraction could justly claim their name in virtue of the actual exercise of leet jurisdiction on even the most modest scale. The leet functions, whether of borough court or manorial court, had, in fact, in course of time become an anachronism almost impossible of tolerance. Some of the causes of this have already been noted.³ The following, however, is a more complete and comprehensive summary:—

(1) *The Infrequency of Leet Sessions*, which were limited in number to two a year, made the leet unsuitable for other than mere supervisory and elective work. It is true that it was urged that the court could "be kept open by adjournment from month

1 Cf. Chapter XXXIV. above, especially under Stepney, Westminster, and Wirral.

2 50-51 Vict., cap. 66, § 40.

3 See above, Chapter XXXII. (§ 2) and Chapter XXXV. (§ 4).

to month, from week to week, or even from day to day"¹; but it is extremely doubtful how far this was legal, and it is quite certain that it was rarely attempted.²

(2) *The Restriction of the Scope of Leet Jurisdiction* to common-law offences and a few specific statutory offences (none of which latter were under statutes of more recent date than 1624) made the leet useless for the enforcement of the growing body of parliamentary regulations which determine the conditions of modern social life.

(3) *The Defective Procedure of the Leet* condemned it in the moral judgment of men who had been trained in the law of evidence, who were doubtful of the impeccability of jurors, and who were alive to the abuses which tended to spring from the untraversability of leet verdicts.

(4) *The Executive Feebleness of the Leet*—which was served by unpaid and often involuntary officers, and which was incapable of inflicting the more effective penalties of statute law—made it comparatively valueless as a defence to the community.

(5) *Changes in Social Conditions* rendered obsolete the taking of the view of frankpledge, the holding of the assizes of bread and ale, the enforcing of restrictions on forestalling, the suppressing of combinations of labourers, the maintaining of watch and ward, and, in fact, the doing of nearly all the things which had once been the staple business of the leet. The "common" duties of individual members of the community, on the performance of which the leet insisted, were gradually rendered unimportant by the institution of "public" services under the control of new local authorities.

(6) *Changes in Legal Conceptions* went hand in hand with changes in social conditions. If one may still be permitted to employ Sir Henry Maine's terms, one may say that the root idea of leet jurisdiction was *status*—i.e., the inalienable and inevitable rights and obligations which belonged to a man as a member of a community in which he had a fixed and predetermined place—and that as *status* gave way to *contract*—i.e., as the conception of individual freedom emerged—the very basis of leet jurisdiction was undermined.

(7) *Development of New Instruments and Agents of Local Government*. Finally, under the combined influence of new

¹ *Ritson Jurisdiction of the Court Leet* (2nd Ed.) p. xix. Cf. also Roberts in *Manchester Court Leet Records*, Vol. IX., p. 243.

² See, however, Portsmouth and Preston in Chap. XXXIV. above.

conditions and new ideas, a new, and an incomparably more efficient, social organisation was brought into existence. All the important duties of the old-time sheriffs and stewards passed into other hands; all the serious functions of the ancient communal and seignorial courts were transferred to novel agencies. The guardianship of the peace was entrusted to a paid and professional constabulary;¹ the election of municipal officers was placed on a democratic basis;² the collection of small debts, and the settlement of other civil disputes, were taken over by the new (and misnamed) county courts;³ the suppression of nuisances was made the business of medical officers of health and sanitary inspectors;⁴ but, above all, the leet functions of the old courts, and with them not infrequently the old courts themselves, were, in many cases, merged and lost in the sessions of the peace.⁵ Even Ritson was forced to admit that the justices of the peace and their courts were, in two respects, superior to the stewards and their leets: on the one hand, the justices were more accessible than the stewards; on the other hand, it was possible to appeal from their decisions.⁶ But there were many other points of superiority—the individual judicial and administrative powers of the justices, the frequency of their petty sessions, the statutory definitions of their functions, their wide discretion in the matter of punishments, their complete subordination to central control. So far superior to the stewards were they, in fact; so immeasurably higher in favour with both king and commonalty did they become, that manorial lords generally ceased to attempt to force upon their tenantry the burden of attendance at the leet, and allowed their claim to effective jurisdiction to lapse—content to keep up the traditions of the “great court” by means of an annual dinner, the formal election of sinecure officers, or some other empty ceremony.

§4.—The New Order.

So the old order changes. Yet, how slowly does it change in this most conservative of all progressive countries. It is nearly three hundred years since Sir Edward Coke wrote his *Institutes*;

¹ Beginning 1829 by stat. 10 Geo. IV., cap. 44.

² By the *Municipal Corporations Acts* of 1835 and 1882.

³ By the *County Courts Acts* of 1846, 1867, etc.

⁴ By the *Public Health Acts* from 1846.

⁵ Cf. above, Chapter XXXIV., especially under Andover, Liverpool, Portsmouth, and Weymouth. Refer also to *Mun. Corp. Rep.*, pp. 1067, 1277, and 2518-9. At Woodstock a “View of Frankpledge and General Sessions of the Peace” was formally recognised by a charter of Charles II.

⁶ Ritson *Jurisdiction of the Court Leet* (2nd Ed.), p. xix.

but still to this day we are not able to say much more than the Jacobean lawyer said concerning the decline of the leet: "vera institutio istius curiæ evanuit, et velut umbra ejusdem adhuc remanet."¹ The leet is, indeed, a mere shadow of its former self. We do not, however, find it possible to lament that the days of its vigorous prime are past and gone. For the activity of the leet, as it flourished in the season of its strength, had within it elements of barbaric indiscriminateness and irresponsibility, which at times even suggested kinship with those primeval forces of nature that apparently ignore moral distinctions and visit with equal destruction good and bad, just and unjust. It is progress, and not retrogression, which has caused leet jurisdiction to pass out of the operative forces of our modern life. Its place has been taken by more calculable, more equitable, more effective instruments of justice and police. But though, as citizens, we view with complacency the decadence of this venerable institution, yet, as antiquarians, we rejoice that it has not wholly vanished from our midst, and we trust that for many years to come, courts such as the lawday of Southampton may continue to meet, even if they serve no other purpose than to remind each fleeting generation as it passes, that it is the heir of an older world, and that some of the liberties which it claims and the privileges which it enjoys have been created by the toil and won by the effort of the men of ages incalculably remote.

¹ *Coke Second Institute*, Mag. Cart., § 35.

THE END.

Appendixes.

APPENDIX I.

THE DOCUMENTS IN USE IN CONNECTION WITH THE COURT LEET
OF SOUTHAMPTON AT THE PRESENT DAY.

(1). The General Summons to Suitors.

TOWN AND COUNTY OF THE TOWN OF SOUTHAMPTON.

NOTICE is hereby given that his Majesty's Court Leet and Law Day will be held at the Municipal Offices in and for the said Town and County on Tuesday theday of..... at eleven o'clock in the forenoon.

ALL PERSONS that do owe suit and service thereat and all Jurymen and others are requested then and there to attend to do and perform what to their several offices do appertain and belong, under the pains and penalties by law inflicted for their neglect therein.

Dated the.....day of.....

(Signed)

Steward.

(2). The Summons to Jurors.

COUNTY BOROUGH OF SOUTHAMPTON.

To.....

THIS is to will and require you to attend at the Municipal Offices, on Tuesday, the Instant, at Eleven o'clock in the forenoon, to do and perform the several duties of a Jurymen at the Court Leet or Law Day then and there to be holden according to ancient custom.

Dated this.....day of....., 19.....

(Signed)

Town Clerk.

Municipal Offices,
Southampton.

(3). The Charge.

All you that are sworn draw near and hear your charge. What you that are sworn as to this court leet are now by your oath (solemn declaration) obliged to inquire upon I shall reduce to these two heads, and they are either of such things as are here only inquirable and presentable or else of such things as are not only presentable but punishable also in this court.

Of the first sort are the more capital offences such as are petty treasons, felonies by common law, felonies by the statute law, together with their accessories; the which offences, although not punishable in this court, are here presentable, and the presentment must be certified unto some superior court, where the offenders are to be prosecuted and punished according to law.

The offences that are both presentable and punishable in this court are such as these:—First, you are to inquire how the constable and tythingman have discharged their duties in arresting of felons, pursuing of hues and cries according to law, and apprehending of rogues, vagabonds and sturdy beggars; and for the securing of such idle and disorderly persons there ought to be a pair of stocks kept in good repair in each tything, for it is the tythingman's prison, and a thing very useful as the world now goes. If any rescous hath been made upon any person driving of cattle to be impounded for a trespass committed, or any pound-breach hath been made and cattle illegally taken thence without due delivery.

Keepers and maintainers of public places for carding, dicing, skittle playing and such like unlawful games, together with the frequenters thereunto, are here punishable, so are also common barrators, scolds, brawlers, and raisers of quarrels, eavesdroppers, such as hearken after news and carry it about with intent to sow dissension and discord among the neighbourhood.

There's another sort of persons very mischievous, and indeed too numerous within this kingdom, and they are such as have no competent estates to maintain them nor will they work to get themselves a livelihood, but commonly spend the day either in sleep or idleness and in the night they betake themselves to robbing of henroosts and fishponds and such like villainies. The law adjudges such persons very dangerous, and so ought you if any such come to your knowledge.

Whoever shall take, kill or destroy any pheasants or part-

ridges in the night time, or hares by tracing them in the snow, or housedoves or pigeons by guns, nets, or otherwise, is here punishable.

If any victuallers have conspired together to sell their victuals but at certain prices, or have put to sale any corrupt victuals not wholesome for man's body.

If any labourers or artificers have combined together to work but at certain rates or at certain times, or not to finish the work they have begun and undertaken to perform.

If any person hath used false weights or false measures or double weights or double measures, that is a great to buy by and a small to sell by in deceit of the people, it is here also punishable.

You are likewise to inquire of offences done and committed by forestallers, ingrossers, and regrattors. A forestaller is one that doth buy or cause to be bought any corn or other victuals whatsoever that is carrying to the fair or market to be sold before it be brought into the fair or market. An ingrosser is one that doth buy corn growing upon the ground (otherwise than by demise or grant), or any butter or cheese or other victuals with intent to sell the same again for unreasonable profit. A regrattor is one that in open fair or market doth buy and get into his own hands corn or other dead victuals, and the same doth sell again in some other fair or market within four miles of the same place.

You are also to look into your highways how they are repaired and amended and whether the several persons therein concerned have done their due service towards the repairing of the same, and whether the hedges and ditches adjoining be kept low and scoured as they ought to be.

If any footpath to church, mill or market be denied that hath been an ancient and accustomed way, or if any house, wall, hedge, or ditch be set up or made in the king's highway, or any watercourse stopped or turned thereinto, or any carrion, dung, or other offensive thing be laid in or near it, or any other nuisance whatsoever to the annoyance of the king's subjects, it is here punishable.

You are to take notice what officers ought of course to be now discharged of their respective offices, and to present the names of other fit persons to serve in their places.

And you shall inquire of all other matters by me omitted that

are here in this Court Leet inquirable and presentable as fully and effectually as if the same had been particularly named to you.

NOTE ON THE CHARGE.

When this charge was drawn up and when first used in the Southampton court it is, I fear, impossible to discover precisely. The contents, however, tell us one or two things about it. They suggest, to begin with, that it was not prepared specially for Southampton. If it had been specially prepared for Southampton we should not have had the terms *tything*, *tythingman*, and *constable* employed, but rather *ward*, *alderman*, and *beadle*. Moreover, the whole tone of the charge is manorial rather than municipal; it says nothing about those urban offences which formed the staple matter of presentment in the Southampton lawday. The fact (alluded to above, p. 257) that the charge in the Bradford court leet is almost verbally the same as the charge at present under consideration, lends confirmatory evidence to the view that it was borrowed from some book of common forms.

The date of its composition is, within certain limits, suggested both by what it includes and what it omits. On the one hand, it refers to various statutory offences the dates of whose definition are determinable. These are (1) the tracing of hares in the snow, 1523; (2) the playing of unlawful games, 1541; (3) the conspiring together of victuallers and labourers, 1548; (4) the neglect of highways, 1555; (5) the snaring of pheasants and partridges, 1580. Moreover, it emphasises the prime distinction between things enquirable only, and things both enquirable and punishable; which distinction we have seen reason for supposing was first clearly and formally stated by Kitchin in 1579 (see above, pp. 36-37). On the other hand, it contains no allusions to the later statutes relating respectively to (1) the building of cottages and harbouring of inmates, 1589; (2) the repressing of drunkenness, 1607; (3) the baking of horsebread, 1624. Internal evidence seems, therefore, to point to the period 1580-89 as that of its origin.

Now it will be remembered that the date 1596 is that under which the term "court leet" is first found in the Southampton records as applied to the ancient "lawday" or Cutthorn court (see above, p. 11). It will also be recalled to mind that at the beginning of the seventeenth century a struggle was waged between legal theorists and supporters of the traditions of the elders respecting the nature and functions of the court (see above, p. 224). I am inclined to consider, then, that it was some town clerk of the late Elizabethan or early Jacobean period who, as leader of the legal theorists, introduced this charge from some semi-official source as an aid to his party in their efforts to confine the activities of the twelve men of the lawday to the limits proper to leet jurors.

APPENDIX II.

LIST OF STATUTES RELATING TO LEET JURISDICTION.¹

9	Henry III. (Magna Carta), ² cc. 17 and 35	A.D. 1225
	Cap. 17 : Sheriff not to hold pleas of crown.	
	„ 35 : Tourn to be held twice a year only.	
51	„ „ Stat. 6, ³ cc. 1, 2, and 3	1266
	Cap. 1 : Assize of bread and ale.	
	„ 2 : Pillory for offending vintners.	
	„ 3 : Weights, measures ; butchers, cooks ; forestallors, etc.	
52	„ „ (Statute of Marlborough), c. 10	1267
	Exemptions from attendance at tourn.	
3	Edward I. (First Statute of Westminster), cc. 9, 20, 33 and 34	1275
	Cap. 9 : Pursuit of felons.	
	„ 20 : Taking of tame beasts out of parks.	
	„ 33 : Barrators.	
	„ 34 : Eavesdroppers.	
12	„ „ (Statute of Wales)	1284
	Sheriff's tourn introduced into the Principality.	
13	„ „ Stat. 1 (Second Statute of Westminster), c. 13...1285	
	Twelve jurors necessary for valid indictment.	
13	„ „ Stat. 2 (Statute of Winchester), cc. 1, 2, 4, 5, and 6..	1285
	Cap. 1 : Hue and cry.	
	„ 2 : Inquest concerning felonies.	
	„ 4 : Watch and ward.	
	„ 5 : Breadth of highways.	
	„ 6 : View of arms twice a year.	
25	„ „ (Magna Carta)	1297
	(See 9 Henry III.)	
18	Edward II. (Statute for View of Frankpledge) ⁴	1325
	The articles of the view.	
1	Edward III., c. 17	1327
	Indictment in tourn by roll indented.	
20	„ „ c. 6	1346
	Justices of assize to enquire of and punish corrupt sheriffs, stewards, jurors, etc.	

¹ For references to these statutes in the text, and for other statutes quoted incidentally, see index.

² Quoted in recent editions of the Statutes as 25 Ed. I. See above, p. 79, Note 3.

³ Placed in recent editions of the Statutes among enactments of uncertain date.

⁴ Placed in recent editions of the Statutes among enactments of uncertain date. Whether it should be included at all is, however, doubtful : see above, pp. 24, 25.

23	Edward III. (Statute of Labourers), c. 6	1349
	Price of victuals.	
25	„ „ Stat. 5, c. 2	1352
	Treason defined.	
27	„ „ Stat. 2 (Statute of the Staple), cc. 10 and 28	1353
	Cap. 10 : One system of weights and measures throughout the kingdom.	
	„ 28 : Liberties of staple and rights of hundreds, etc. (contains the first statutory use of the term "leet").	
5	Henry IV., c. 5	1403
	The cutting out of tongues and the pulling out of eyes made felony.	
4	Henry VI., c. 1	1425
	Stewards of leets empowered to enquire into failure of sheriffs to return writs to justices of gaol delivery.	
1	Edward IV., c. 2	1461
	Indictments in tourns to be transmitted to justices of the peace.	
4	„ „ C. 1	1464
	Stewards of leets authorised to hear complaints of cloth makers, etc.	
12	„ „ C. 8	1472
	Surveyors of victuals not to deprive stewards in leets of their old powers.	
1	Richard III., c. 4	1483
	Qualification of jurors fixed at 20/- freehold, or 26/8 copyhold.	
14-15	Henry VIII., c. 10	1523
	The tracing of hares.	
24	„ „ C. 10	1533
	The destroying of crows.	
24	„ „ C. 13	1533
	The wearing of suitable apparel.	
32	„ „ C. 13	1540
	The breeding of horses.	
33	„ „ C. 6	1541
	The use of cross-bows and hand-guns.	
33	„ „ C. 9	1541
	Neglect of archery; playing unlawful games.	
33	„ „ C. 17	1541
	The watering of hemp.	
2-3	Edward VI., c. 10	1
	The making of malt.	
2-3	„ „ C. 15	1
	Conspiracies of victuallers and craftsmen.	
7	„ „ C. 5	1
	The prices of wines.	

2-3 Philip and Mary, c. 8	I555
The repairing of highways.	
4-5 ,, C. 3	I557
The taking of musters.	
1 Elizabeth, c. 17	I559
The preserving of fisheries.	
5 ,, C. 1	I562
Act of Supremacy to be read in leets.	
5 ,, C. 13	I562
The repairing of highways.	
8 ,, C. 15	I566
Modification of 24 Hen. VIII., c. 10.	
13 ,, C. 19	I571
The wearing of woollen caps.	
18 ,, C. 10	I576
The repairing of highways.	
23 ,, C. 10	I580
The preserving of pheasants and partridges.	
31 ,, C. 7	I589
Cottages and inmates.	
1 James I., c. 5	I603
Excessive fines and amercements in leets.	
4 ,, ,, C. 5	I607
The repressing of drunkenness.	
21 ,, ,, C. 21	I624
The baking of horsebread.	
Commonwealth Ordinance	Nov. 22nd, 1649
English language to be used in records.	
14 Charles II., c. 12	I662
Some lords of manors do not hold courts leet regularly.	
1 George I., Stat. 2, c. 5	I714
The Riot Act to be openly read at every leet.	
11 ,, ,, C. 4	I724
Elections of mayors in leets.	
1 George II., Stat. 2, c. 19.....	I727
Turnpike Act to be read in leets.	
35 George III., c. 102.....	I795
Weights and Measures.	
55 ,, ,, C. 43	I815
Weights and Measures.	
50-51 Victoria, c. 55	I887
Abolition of tourns; recognition of leets.	

APPENDIX III.

LIST OF LEADING CASES RELATING TO LEET JURISDICTION.¹

- Abbot v. Weekly, 1665. [Levinz K. B. Reports, I., 176.]
Bylaws to be valid must relate to matters properly cognisable in the leet.
- Abdey's Case, 1640. [M. and S. Hist. of Boroughs, 1659.]
Alderman of London excused as such from serving as constable of Riholl.
- Bathurst v. Cox, 1662. [T. Raymond K. B. Reports, 68.]
Fine of 40/- for contempt of court by putting on hat.
- Bedford (Duke of) v. Alcock, 1749. [Wilson K. B. Reports, I., 248.]
Presentment and amercement by six jurors no bar to appeal.
- Bonner's Case, 1610. [M. and S. Hist. of Boroughs, 1687-8.]
Bylaw concerning settlements held good.
- Brook v. Hustler, 1706. [Modern Reports, XI., 76].
Affeerment not necessary if the jury will amerce in a certain amount.
- Bullen v. Godfrey, 1614. [Rolle K. B. Reports, I., 73.]
Jurors fined severally for refusing to make presentments.
- Chamberlain of London's Case, 1590. [Coke K. B. Reports, V., 63 ;
Fraser, Vol. 3, p. 126.]
Bylaw to be valid must relate to matters properly cognisable in the leet.
- Colebrooke v. Elliott, 1766. [Burrows K. B. Reports, III., 1860.]
Limitation of powers of leet : no authority to assay bread under statute 3 Geo. III., c 11.
- Cook v. Stubbs, 1620. [Crokes K. B. Reports (James I.), 583.]
Every man in some leet ; none in more than one.
- Crane v. Holland, 1628. [Crokes K. B. Reports (Charles I.), 138.]
Custom for steward to nominate jurors may be good.
- Cutler v. Creswick, 1674. [Keble K. B. Reports, III., 362.]
Jury must consist of twelve at the least.
- Dacre v. Nixon, 1618. [Rolle K. B. Reports, II., 56.]
The proprietor of the lands of a dissolved monastery does not enjoy the immunity from attendance at the tourn which his ecclesiastical predecessor enjoyed.
- Dakin's Case. [Saunders K. B. Reports, II., 290.]
Time of meeting of leet as determined by Magna Carta (contrast Lawson v. Hares).
- Darell (or R.) v. Bridge. [Blackstone K. B. Reports, I., 47.]
Long disuser induces suspicion of title.
- Davidson v. Moscrop, 1801. [Barnewall and Adolphus K. B. Reports, III., 49 ; also East K. B. Reports, II., 56.]
Jurors ought not to be sworn at one court to present at the next.

¹ For references to these cases in the text see index.

Davis v. Lowden. [Carter K. B. Reports, 29.]

Lord of leet should provide pillory and tumbrel; inhabitants should provide stocks.

Delacherois v. Delacherois. [House of Lords Cases, XI., 62.]

All residents owe suit to leet.

Delve's Case. [Nelson Lex Man., 132.]

Leet appendant to messuage.

Doe v. Ball. [Nelson Lex Man., 85.]

Fine set by steward recoverable by action of debt.

Edwards v. Hughes. [Gilberts Equity Reports, 209.]

Prescriptive leet may be held oftener than twice a year.

Evelin v. Davies, 1684. [Levinz K. B. Reports, III., 206.]

Affeerors are appointed by the steward.

Exeter (Earl of) v. Smith. [Carter C. P. Reports, 177.]

Common lands are under court baron and not court leet.

Fletcher v. Ingram, 1695. [Salkeld K. B. Reports, 175.]

Fine for refusal to serve as constable when selected by jury.

Fowey (Borough of) Case, 1791. [Peckwells Election Cases, L, 512.]

Election of officers and impanelling of leet jury.

Gateward's Case, 1606. [Coke K. B. Reports, VI., 60; Fraser, Vol. 3, p. 374.]

Bylaws to be valid must relate to matters properly cognisable in the leet.

George v. Lawley, 1693. [Skinner K. B. Reports, 392-3.]

Notice to suitors need not be proved.

Gittins v. Cowper, 1609. [Brownlow Reports, IL, 217.]

Leet may be appendant to a messuage.

Godfrey's Case (Bullen v. Godfrey and others), 1614. [Coke K. B. Reports, XI., 43; Fraser, Vol. 6, page 76.]

Stewards of leets may not imprison.

Griesley's Case. [Dyers K. B. Reports, 233.]

Stewards may inflict reasonable fines for contempt of court. Jurors fined for departing without giving verdict.

Griffin v. Cooper. [Nelson Lex Man., p. 132.]

Leet may be appendant to a messuage.

Hughs v. Bishop of London, 1672. [Keble K. B. Reports, III., 106.]

Private grievances not cognisable in leets. A presentment "ad nocumentum diversorum" is bad.

Jeffrey's Case, 1589. [Coke K. B. Reports, V., 66. Fraser, Vol. III., p. 130.]

Bylaws to be valid must relate to matters properly cognisable in the leet.

Lawson v. Hares, 1586. [Leonard K. B. Reports, IL, 74.]

In respect to time of meeting of leet, Magna Carta relates only to "the leet of the town." (Contrast Dakin's Case.)

- Lincoln (Earl of) v. Fisher. [Owen K. B. Reports, 113.]
Steward may fine for contempt, and may even imprison for gross misdemeanour in the face of the court.
- Loader v. Samwel, 1619. [Crokes K. B. Reports (James I.) 551.]
Presentment not made in the leet to be made in the tourn.
- Luxmore v. Lethbridge. [Barnewall and Adolphus K. B. Reports, IV., 898.]
A steward, since he must be learned in the law, may charge for holding a leet.
- Matthews v. Cary, 1689. [Showers K. B. Reports, I., 62.]
Affeerment not necessary if jury amerces in a certain amount.
- Moore v. Wickers. [Andrews K. B. Reports, 47 and 191.]
Search for false weights.
- Morgan's Case, 1615. [Rolle K. B. Reports, L, 201. Cf. Pratt v. Sterne.]
Leet by prescription may be held oftener than twice a year.
- Norris (Lord) v. Barret. [Modern Reports, 426.]
Leet may be appendant to a hundred, but is not incident to it.
- Partridge's Case, 1633. [W. Jones K. B. Reports, 290.]
Leet by prescription may be held oftener than twice a year.
- Phillips v. High Bailiffs of Westminster, 1742. [Hale Practice of the Court Leet of Westminster.]
Constables to be appointed by jurors and not by bailiffs.
- Porter v. Gray, 1591. [Croke K. B. Reports (Eliz.), 245.]
Time of meeting fixed by prescription.
- Pratt v. Sterne, 1616. [Croke K. B. Reports (James I.), 382.]
Presentment of nuisance must conclude with the expression "to the common annoyance of the King's subjects."
- Rasing v. Ruddock (see Ruddock's Case).
- R. v. Adlard, 1825. [Barnewall and Creswell K. B. Reports, IV., 780.]
Resistance determined by bed.
- R. v. Ayers, 1666. [Keble K. B. Reports, II., 139.]
Private trespass to lord not amercable in leet.
- R. v. Bankes, 1764. [Burrows K. B. Reports, III., 1452.]
Appointment of officers in a leet.
- R. v. Bingham, 1802. [East K. B. Reports, II., 308.]
Impanelment of jury in a leet by the bailiff.
- R. (or Darell) v. Bridge. [Blackstone K. B. Reports, L, 47.]
Long disuser induces suspicion of title.
- R. v. Dickenson. [Saunders K. B. Reports, L, 135.]
Public annoyances only, not private trespass on lord, amercable in a leet. Common lands are under court baron and not court leet.

R. v. Everard, 1701. [Salkeld K. B. Reports, I., 195.]

Jurisdiction of joint court leet and court baron (*curia visus francplegii cum curia baronis*) in case of cottages and inmates under 31 Eliz., c. 7.

R. v. Foxby, 1714. [Modern Reports, VI., 11 et seq.]

Soulds punishable by ducking stool in leet as common nuisance.

R. v. Harrison, 1722. [Modern Reports, VIII., 135.]

Persons who lack the necessary qualifications sworn on leet jury.

R. v. Heaton, 1788. [Durnford and East Term Reports, II., 184.]

The fact that a presentment has been duly made in a leet may be traversed.

R. v. Jennings, 1709. [Modern Reports, XI., 215 and 227.]

Leet may be held by prescription oftener than twice a year.

R. v. Joliffe, 1823. [Barnewall and Creswell K. B. Reports, II., 54.]

Steward of leet may by custom nominate jurors; but apart from custom it should be bailiff.

R. v. Lord of the Hundred of Milverton, 1835. [Adolphus and Ellis K. and Q. B. Reports, III., 284.]

Mandamus to compel lord to hold a leet.

R. v. Mayor, etc., of West Looe, 1822. [Barnewall and Creswell K. B. Reports, III., 683.]

Election of officers and impanelling of jurors.

R. v. Roupell. [Hawkins Pleas of the Crown, II., 10; and Cowper K. B. Reports, 458.]

All cases whatsoever can be removed from the leet to the King's Bench by *certiorari*, and there traversed.

R. v. Routledge. [Douglas K. B. Reports, II., 537.]

No person is in two leets.

R. v. Rowland, 1819. [Barnewall and Alderson K. B. Reports, III., 130.]

Appointment of officers in leet.

R. v. Stevens. [T. Jones K. B. Reports, 212.]

Constable to be elected by jury and not nominated by steward.

R. v. Willis. [Rolles K. B. Reports, II., 107; and Andrews K. B. Reports, 279.]

Lord compellable by *mandamus* to hold a leet.

Rowles v. Mason, 1612. [Brownlow Reports, II., 200.]

Leet cannot be prescribed for as appendant to a church or chapel.

Ruddock's Case (Rasing v. Ruddock), 1599. [Coke K. B. Reports, VI., 25; Fraser, Vol. 3, p. 306.]

Bylaws may be made in leet.

Saunderson's Case, 1585. [Leonard K. B. Reports, IV., 12.]

Pound breach not properly enquirable in a leet.

Sheppard v. Hall, 1832. [Barnewall and Adolphus K. B. Reports, III., 433].

Search for and destruction of false weights and measures.

Steverton v. Scrogs, 1599. [Croke Q. B. Reports (Eliz.), 698.]

Leet forfeitable through neglect of duties.

Stubbs v. Flower. [Bulstrode K. B. Reports, I., 125.]

The writ *moderata misericordia* does not lie in respect of an amercement made in a leet or other court of record.

Swan v. Morgan. [Nelson *Lex Man.*, 80.]

Fine set by steward on sutor who refused to be sworn on jury recoverable by distress.

Tinsley v. Nassau, 1827. [Moody and Malkin *Nisi Prius Reports*, L, 52.]

The steward is judge in a leet.

Tott v. Ingram. [Brownlow Reports, L, 186.]

Suit to a leet cannot be released.

Tottersall's Case, 1632. [W. Jones K. B. Reports, 283.]

Leet forfeitable by non-user, by acts of abuser, or by neglect.

Tyrringham's Case, 1584. [Coke K. B. Reports, IV., 37; Fraser, Vol. 2, p. 379.]

Leet cannot be prescribed for as appendant to a church or chapel.

Willcock v. Windsor, 1832. [Barnewall and Adolphus K. B. Reports, III., 43.]

Search for false weights.

Wood v. Lovatt, 1796. [Durnford and East Term Reports, VI., 511.]

An amercement at a court leet for a private injury to a lord is illegal, even though there be a custom to warrant it.

Wormleighton v. Burton. [Viner *Abridgment*, s. v. Leet.]

Overcharging of commons.

Yeovil's (Portreeve of) Case, 1619. [Rolle K. B. Reports, II., 82.]

Election of officers and impanelling of jury.

APPENDIX IV.

HITHERTO UNPUBLISHED ARTICLES OF THE VIEW FROM A
FOURTEENTH CENTURY MS. FOLIO IN THE LIBRARY OF
THE UNIVERSITY OF CAMBRIDGE.

1.—*Videnda de Visu Franciplegii.*¹

In sequentibus videndum est de visu franciplegii.

Primes vus nous dirrez par le serment qe vus auez fayt si tous les siutiers (sic) qui deyuent siute a ceste court soyent venuz come venir deyuent e les quex non. Et si touz les chiefs plegges soyent venuz ouesque lur diseynes e les quex non. E si tous ceuz de dozze auns et plus soyent en la assis' nostre seignur le Rey. E les quex non. E qui les ad rescettez. ¶ Si il yeyt nul des vileyns le seignur ayllurs en francplegge qe en ceste court. ¶ Si il yeyt nul des vileins le seignur ayllurs demorantz qe en le demeigne le Reys. ¶ De ceux qui sunt en les demeignes le Roys e ny vnt pas este vn an e vn iour. ¶ Des costumes e des seruices dunz a ceste court sustretz. E coment. E par qui. E en temps de quel bayllif. ¶ Des purprestures faytes en terres e en ewes. ¶ Des murs mesons fossees hayes lenees ou abatuz en nulance del poeple. ¶ De boys ou busche trenche e emportee. ¶ Des diuises trenchees hosteez ou amenusees. ¶ Des curs des ewes tresturnees ou estupees ou amenees hors de lur droyt curs. De burgesurs E de lur recetturs. ¶ Des communs larons. E des petiz larons come des owes gelines garbes. ¶ Des larons qui sakent dras ou autres choses parmy fenestres ou pertuz. ¶ De ceux qui vunt en messages des larons. ¶ De vthez e huecrie leuee et ne mie pursiuy. ¶ De sang espanduz. ¶ Des fauces mesures come de bussels galons verges alnes. ¶ Des fauces balances. ¶ Des fauz poys. ¶ De ceus qui vnt duble mesures. E achatent par le greyndre e vendent par le meyndre. ¶ De ceux qui assiduelment haudent les tauernes e lem ne stet dunt ceo vient.² ¶ De ceux qui dorment les iours e veyllent des nutz e si mangent bien et boyuent e ne ount terre ne rente. ¶ Des mesfesurs en viners en pars e en conyngiers. ¶ Des coureours e enblanchesurs des quirs. ¶ Des weyfs le seignurs si

¹ Camb. Univ. Library, MSS. Dd. 7, 6, f. 60a, col. 2. See above, pp. 31 and 37.

² Probably corrupt. The corresponding passage in the *Statutum Visus Franciplegii* reads: "homme ne salt donnt ils vivent."

nul soit purloigne par quoy le seigneur purroit perdre. ¶ De ceux qui prennent les columbs en yuer par laaz ou par autre engyn. De cestes choses faitez nous asauoyr par le serment qe vus nus auez fet.

[*Translation* : The following relate to the view of frankpledge. First you shall tell us by the oath which you have made if all the suitors who owe suit to this court are come as they ought to come, and who not; and if all the chief pledges are come with their thythings, and who not; and if all those of twelve years and over are in the assize of our lord the king, and who not; and who has received them. If there are any of the lord's villains elsewhere in frankpledge than in this court. If there are any of the villains of the lord living elsewhere than in the king's demesne. Of those who are in the king's demesne and have not been there a year and a day. Of customs and services owed to this court and withheld—how, and by whom, and in the time of what bailiff. Of encroachments made in lands and in waters. Of walls, houses, ditches, hedges raised or razed to the annoyance of the people. Of woods or thickets cut down or carried away. Of boundary marks cut down or removed or reduced. Of water-courses turned or stopped or diverted from their proper channel. Of housebreakers and those who receive the stolen goods. Of common thieves, and petty thieves as of geese, fowls, sheaves of corn. Of thieves who take clothes or other things through windows or holes. Of those who go on thieves' messenges. Of hue and cry raised and not pursued. Of bloodshed. Of false measures, as bushels, gallons, yards, ells. Of false balances. Of false weights. Of those who have double measures and buy by the greater and sell by the less. Of those who continually haunt taverns and one does not know on what they live [? whence this comes.] Of those who sleep by day and watch by night, and yet they eat well and drink, and have neither land nor income. Of evil-doers in vineyards, parks, and rabbit-warrens. Of curriers and whiteners of leather. Of wafes of the lord, if any are stolen whereby the lord may suffer loss. Of those who take doves in winter by snares or other devices. Of these things give us information in accordance with the oath which you have sworn.]

2.—Capitula quæ debent inquiri.¹

Hec sunt capitula que debent inquiri ad visum franciplegii in singulis locis Anglie vbi homines sunt in decena. Et debent bis inquiri in anno, videlicet ad festum sancti Michaelis, et ad Pascha. ¶ Debet enim primo vocatus Jurare quod verum dicet et quod pro nullo dimittet quin verum dicet de capitulis sive articulis que ab eis exigentur ex parte domini Regis et domini curie. ¶ In primis si omnes libere tenentes venerint sicut summoniti extiterunt nec ne. ¶ Si omnes duodecim annorum sunt in decena. ¶ Si aliquis de libertate domini qui implacitat aliquem extra libertatem quis ille est. ¶ Si aliquis malefactor de latrocinio incendio homicidio robberia vel de aliquo malefitio contra pacem rectatus [rettatus] est. Et quis eum receptauit. Et quis ille est. Et si non in puplico dicatur clam. ¶ Si aliquis falsator monete uel rotundor siue retonsor monete sit. Et quis sit. ¶ Si aliquis excambiator sit sine licentia domini Regis uel balliuorum suorum. ¶ Si aliquis vsurarius christianorum sit mortuus inquirerent de eius catallis. ¶ Si catalla latronum retenta sunt per quem vel per quos. ¶ Si aliquis noctanter frequentauerit scotala et nocte vigilauerit et die dormierit consuete. Si aliqua femina vi rapta fuerit contra pacem. ¶ Si thesaurum fuerit inuentum. Quis innenit. Et quod thesaurum. ¶ Si aliquis hospitatur contra assisam magis

¹ Camb. Univ. Library MSS. Dd. 7, 6, f. 63a, col. 2, and f. 63b, col. 1. See above, pp. 31 and 58.

quam per vnam noctem. ¶ Si sanguis fuerit effusus per quem vel per quos. Et si specialiter fuerit secutus. ¶ Si hutesium fuerit leuatum quomodo fuerit secutum. ¶ Si aliquis abierit pre timore Justiciariorum et postea redierit sine warranto domini Regis. Quis eum receptauit. ¶ Si aliquis sit in decena et non iustificat se franciplegio suo. Quis ille est. ¶ Si aliqua purprestura facta fuerit vt de fossato muro arura super dominum Regem vel super dominum Curie vel super vicinos. ¶ Si aliquis murus iniuste fuerit protractus uel leuatus. ¶ Si aqua uersata fuerit. Quomodo vel per quem vel super quem. ¶ De viis et semitis extuppatis uel tresturnatis. ¶ De mensuris vlnarum gallonum et busellorum. ¶ De assisa panis et ceruisie. ¶ Et memorandum quod quatuor modis poterit assisa frangi ceruisie videlicet si vendant contra assisam carius quam facere deberent vel si vendant ceruisiam minus sufficientem vel si vendant antequam tastatores illam tastauerunt vel si vendant cum falsa galoue uel mensura. ¶ De cissoribus campestribus qui vendunt veteres pannos et faciunt de robis et capis caputia et caligas mutando eas in aliam speciem. ¶ De carnificibus campestribus. ¶ De albatoribus coreorum. ¶ De tannatoribus quorum est mala fama. Quomodo se habent. ¶ De bestiis que vocantur weyvia si inueniantur ad cuius manum deuenerint. ¶ Et quomodo vigilia seruatur. Explicit.

[*Translation*: The following are the heads concerning which enquiry ought to be made at the view of frankpledge in every place of England where men are in tything. And the enquiry ought to be made twice each year, viz., at the feast of Saint Michael and at Easter. First [each juror] ought to be called to swear that he will speak truth and that on no account will he abstain from speaking the truth respecting the heads or articles which from the jurors shall be enquired about on behalf of our lord the king and the lord of the court. First, if all freeholders are come according to summons or not. If all of twelve years of age are in tything. If there is anyone within the lord's liberty who impleads another outside the liberty, and, if so, who? If any malefactor in respect of theft, arson, murder, robbery or any other offence against the peace has been accused, and who has received him, and who the malefactor is, and if the information is not given openly, let it be given in secret. If there is any forger or rounder or clipper of money, and who he is. If there is any broker without licence of the lord king or his bailiffs. If any usurer from among Christians is dead, they shall enquire concerning his chattels. If felons' goods have been kept, and by what person or persons. If any shall have frequented ale-houses by night and shall have habitually stayed awake by night and slept by day. If any woman shall have been ravished contrary to the peace. If treasure shall have been found, who has found it, and what treasure. If anyone entertains a stranger contrary to the ordinance more than for one night. If blood shall have been shed, by what person or persons, and if it shall have been specially pursued. If the hue shall have been raised, how it shall have been pursued. If anyone shall have departed for fear of the justices and afterwards shall have returned without warrant of the lord king, who has received him. If anyone is in tything and does not clear himself in his pledge, who he is. If any encroachment shall have been made, as of ditch, wall, [or] ploughed land upon the lord king or upon the lord of the court, or upon the neighbours. If any wall shall have been wrongfully extended or diminished. If water shall have been diverted, how, or by whom, or upon whom. Concerning roads and paths stopped or turned. Concerning measures of ells, gallons, and bushels. Concerning the assize of bread and ale. And be it remembered that the assize of ale can be broken to four ways, viz., if they sell contrary to the ordinance dearer than they ought; or if they sell ale too weak; or if they sell before that the tasters have assayed it; or if they sell with false gallon or measure. Concerning rustic tailors who sell old garments and make of robes and capes hoods and leggings for sandals by changing them into another form. Concerning rustic butchers. Concerning whiteners of leather. Concerning tanners of ill repute, how they conduct themselves. Concerning beasts who are called waifs, if they are found, to whose hand they shall have come. And how the watch is kept. It is finished.]

APPENDIX V.

THE ARTICLES OF THE VIEW AS ENUMERATED IN WYNKYN DE
 WORDE'S EDITION OF THE *Modus tenendi Curias* OF DATE
 ABOUT A.D. 1510.

The "twelve" are to enquire concerning: (1) "Hedborowes with their desyners"; (2) "Petit Treson," coiners, etc.; (3) Putting out of eyes, cutting of tongues and noses; (4) "Small theves," e.g., of hens or of "gere in mennes wyndowes" not above value of 14½d.; (5) Receivers of thieves or thieves' messengers; (6) "Grete theves which stele neete oxen or kye or shepe or any other goodes [of] grete value"; (7) Persons who have taken the churchyard and escaped without any abjuration of the realm; (8) Escape wilful; (9) Returned exiles; (10) Outlaws not pursued; (11) Assaults and affrays against the king's peace; (12) Rescues; (13) Wounds and bloodshed; (14) Bakers: unwholesome bread and breach of assize; (15) Brewers: breach of assize, unsealed measures; (16) Double measures and weights; (17) Sellers of victuals: unwholesome, or of excessive price; (18) Ways or waters obstructed or diverted; (19) Encroachments; (20) Houses, hedges, etc., "areysed or caste doune to the noysaunce of the kynges people"; (21) "Also of all whyte towers that sell not good chaffer as they ought to do reasonably and by the skynnes in any other place than in towne or markette ye shall do us to wete"; (22) Cordwayners and artyfycers "that make not good chaffer"; (23) Oath of allegiance of "all those that ben xii. yere olde"; (24) Removers of boundary marks, "emeinours of house doves," etc.; (25) Brawlers and eavesdroppers; (26) Greyhounds kept by persons "that may not dypende 40/- by the yere"; (27) Waif; (28) Stray if not claimed within a year and a day; (29) Purse-cutters; (30) Regrattors or forestallers; (31) Millers who take excessive toll; (32) Evil persons "that wake on the nyght and slepe on the day"; (33) Treasure trove; (34) Encroachments on kynges possessions; (35) "Also of all lollardes yf there be any amonge you and of theyr scoles"; (36) Officers, viz., constables, aleconners, bailiffs, "or any other officers"; (37) Ravishers of women; (38) "Also

of all maner of felonyes and also robbers felonously done w'in this lordshyp"; (39) "Also ye shall enquiry by the othes whiche ye have made yf all the defautes and playntes that were presented at the last let daye be amended or no, as they ought to be, and of these poyntes and of all other that ye be wontt to be charged of as for the court and for the lete that is worthy to be presented, ye shall goo togyder and brynge in true verdyte."

APPENDIX VI.

COURTS LEET MENTIONED IN MUNICIPAL CORPORATIONS REPORT AS EXTANT IN 1835.

Aberavon, Altrincham, Banbury, Beaumaris (View of Frankpledge), Blandford, Bodmin, Bossiney, Brackley, Brecon, Burton-on-Trent, Bury St. Edmunds, Caerways, Cambridge, Camelford, Canterbury, Cardigan, Carnarvon, Castle Rising, Cefn Llys, Calne, Chichester, Chipping Norton, Chipping Sodbury, Chipping Wycombe, Crickhowell, Congleton, Conway, Dinas Mawddwy, Doncaster, Dorchester, East Looe, Eye, Faversham, Fishguard, Flint, Gateshead, Grimsby, Havering-atte-Bower, Kilgerran, Kingston-on-Thames, Lampeter, Llanelly, Llantrissant, Lincoln, Marlborough, Montgomery, Newport (I.W.), Newport (Pem.), Petersfield, Portsmouth, Presteign, Quinborowe, Rhuddlan, Ruthin, Ruyton, Shaftesbury, Shrewsbury, St. Clears, Stockton, Tewkesbury, Usk, Wareham, Weobly, Westbury (Borough Court), West Looe, Wickwar, Wiston, Yarmouth.

APPENDIX VII.

THE LIST OF THE FREESUITORS OF THE COURT LEET OF SOUTHAMPTON AS GIVEN IN 1907, WITH A TABLE ILLUSTRATIVE OF ITS HISTORY. (See above, pp. 181-185.)

THE FREESUITORS' LIST, 1907.	Date at which the name itself is first found in extant books.	Date at which the addition "the heirs of" is first found in extant books.	NOTES.
1. The Provost of Queen's College, Oxford The Warden of God's House in the Town of Southampton	—	—	A single entry has the two. From the earliest list (1566) till that of 1694 simply "Prior Domus Dei." In 1694, correctly, "Præpositus Collegii Regine in Oxon. pro priore Domus Dei." In 1711 for the first time, and only, as two separate entries, and so <i>ad nunc</i> . In one form or another—prece now , present, etc.—in every list from 1566 <i>ad nunc</i> . In one form or not <i>in</i> every list.
3. The Chanter of St. Mary's, Southampton	—	—	
4. The Warden of St. Mary's College, near Winchester	—	—	
5. The Heirs of Ralph, Duke of Montague	1694	1713	In 1694 the entry runs, "Radulphus Comes de Montague pro terra ¹⁰⁸ uper Southamptonæ." This nobleman was Ralph, third Baron Montague, created Earl 1689 and Duke 1705. He died 1709. His first wife had been Elizabeth, daughter of Thomas Wriothesley, Earl of Southampton. The direct line ended with their son John, the second Duke, whose death was <i>occurred</i> in 1749.

THE FREESUITORS' LIST, 1907. (continued.)		Date at which the name itself is first found in extant books.	Date at which the name "the heirs of" is first found in extant books.	NOTES.
6.	The Heirs of Sir John Hoby Mill, Bart.	1773	1781	Before 1773 "Heirs of Sir Richard Mill, Bart."
7.	Thomas J adn , Gent.	1675	1707	Before 1675 "Grafton Jackson, Gent."
8.	John Pollen, Esq.	1694	1733	
9.	His Bracebridge, Gent.	1680	1706	Sheriff 1693, Mayor 1702.
10.	John Pratt for Elliott's	1628	1670	Before 1628 "John Elliot."
11.	David ad , Gent. (ad be <i>Daniel</i> ard ; mis copied since 1808)	1710	1744	Before 1710 "Heirs of Henry Goddard."
12.	Edward Fryer, Gent.	1694	1710	Before 1694 "Heirs of Kingston Fryer."
13.	His Gelin	1652	1675	Before 1652 "Heirs of Henry Caplin."
14.	His as	1623	1658	Mayor 1627.
15.	William Knight	1755	1764	
16.	John Knight for St. Dennis	(the me af not in any extant book)	1694	For "Richard Knight" paying suit for the same estate, see lists 1571-1596.
17.	West Faishen (in the older books " <i>ffashin</i> ")	1620	1639	Before 1620 "Heirs of Thomas ffashin."
18.	William Sanby (should be William <i>Sendy</i> ; mis copied since 1746)	1580	1596	Before 1580 "Heirs of Lawrence Sendy."
19.	Robert Russell	1582	1587	

THE FREESUITORS' LIST, 1907. (continued.)		Date at which the name itself is first found in extant books	Date at which the addition "the heirs of" is first found in extant books.	NOTES.
20.	The Heirs of Sir Robert Bannister, Knight (should be Sir <i>Edward</i> Bannister; miscopied since 1818)	1579	1680	In 1566 "William Banester." From 1569 to 1575 "Heirs of ——— Banester." In 1576-7 "——— Banester." In 1675 Sir Edward Banister is marked as "defunct."
21.	" Richard Oldman	1675	1703	Before 1620 "Heirs of John Cornish."
22.	" Nicholas Davies (in the older books <i>Davis</i>)	1620	1711	Before 1680 "Richard Bailey."
23.	" James Bailey	1680	1694	Before 1704 "Heirs of Henry Norborne."
24.	" Richard Port	—	1704	Before 1710 "Heirs of Henry Bromfield."
25.	" Thomas Heather	—	1710	
26.	" George Speed	1675	1682	Before 1589 "Heirs of James Yelding."
27.	" William Galding (should be William <i>Yelding</i> ; mis copied ise 1818 [<i>Yald-</i> <i>ing</i>] and 1875 [<i>Galding</i>])	1589	1629	
28.	" Peter Searle (in the 1st books <i>Seale</i>)	1623	1656	Mayor 1630 and 1642. Marked in the 1654 book as "sick and excused."
29.	" William Macey (should be <i>Richard</i> Macey; mis copied since 1754)	1600	1603	Before 1600 "Heirs of Henry Macey."
30.	" William Grant (should be <i>John</i> Grant; mis copied since 168	1605	1624	

THE FREESUITORS' LIST, 1907.
(continued)

		Date at which the name itself is first found in extant books.	Date at which the addition "the heirs of" is first found in extant books.	NOTES.
31.	The Heirs of John Major	1600	1611	Sheriff 1598, Mayor 1600.
32.	Thomas Matcham	1702	1737	Before 1702 "Heirs of Cornelius Matcham."
33.	The Churchwardens of St. Lawrence's	—	—	In every list from the beginning.
34.	The Heirs of John Gollop, Esq. (should be <i>Roger</i> Gollop; mis copied since 1749)	1652	1703	Before 1652 "Heirs of George Gollop." Roger Gollop was M.P. for Southampton 1658-9.
35.	Henry Ward	1755	1795	Before 1755 "Heirs of James Ward."
36.	Thomas Nevy (should be <i>John</i> Nevy; mis- copied since 1818-34)	1711	1733	
37.	Henry Norbonne	1680	1710	Before 1680 "Heirs of Richard Cornelius."
38.	Thomas Bower	1680	1694	Before 1680 "Thomas Rowse," of which "Thomas Bower" looks like a miscopy.
39.	Thomas Gould	1680	1694	
40.	David Hancock	1600	1601	
41.	Samuel Wislad for Fletcher's (in the older books <i>Whistad</i>) Lawrence Prowse	—	1694	Before 1694 "Heirs of Thomas Fletcher."
42.	Thomas Inglis	1611	1628	Mayor 1618.
43.	John Mansfield for Marriott's	1706	1757	Mayor 1719 and 1728.
44.		1686	1707	Before 1686 "Heirs of William Merriott."

THE FREESUITORS' LIST, 1907. (continued.)		Date at which the name itself is first found in extant books.	Date at which "the addition" "the heirs of" is first found in extant books.	NOTES.
45.	The Heirs of Edward Moody, Gent. (should be <i>Edmund</i> Moody; mis copied since 1808)	1755	1786	Mayor 1753.
46.	William Purbeck, Gent.	1755	1776	
47.	George Parker, Gent.	1615	1639	Mayor 1752 and 1763.
48.	Arthur Atherley, Gent.	1733	1742	
49.	John Godfrey, Gent. (should be <i>William</i> Godfrey; mis copied since 1781)	1694	1726	
50.	Mr byte (in the older b oks <i>Layte</i> , and 1675 apparently <i>Lake</i>)	1675	1707	
51.	Tho mas Mly for Foxhall's	1694	1710	Before 1694 "Heirs of Philip Foxall."
52.	Philip Odar	1793	1726	
53.	John Guillaume	1658	1710	The 1658 list gives "The heirs of John Guillaume," and adds "John Guillaume his sonne and heire claymes the land."
54.	William Lyne, Gent.	1682	1701	
55.	Major Dunch, Esq.	—	1686	Before 1686 "Heirs of John Major defunct."
56.	William Williston (in the older books <i>Walliston</i>)	1680	1696	Sheriff 1667, Mayor 1675.
57.	Robert Beare, Jr.	1755	1760	

THE FREESUITORS' LIST, 1907. (continued.)		Date at which the name itself is first found in extant books.	Date at which the addition "the heirs of" is first found in extant books.	NOTES.
58.	The Heirs of George Sims (should be <i>Gregory Symmes</i> ; miscribed since 1680)	1639	1650	
59.	" Daniel Neale (should be <i>Veale</i> ; miscribed since 1768)	1694	1707	Sheriff 1697.
60.	Robert Ralph (in the older books <i>Rolfe</i>)	—	1652	
61.	George Edmunds (should be <i>James</i> Edmunds; miscribed since 1814)	1680	1743	
62.	" William Joliffe	1710	1743	
63.	" Robert Atherley	1665	1726	
64.	" John Smith	1675	1710	
65.	" John Stevens, Gent. (should be John <i>Stephoe</i> ; miscribed since 1775)	1665	1680	Sheriff 1659, Mayor 1663.
66.	" William Freeman, Gent.	1773	1775	
67.	" Richard Palmer	1680	1710	
68.	" James Fowler	1680	1704	

THE FREESUITORS' LIST, 1907. (continued.)		Date at which the name itself is first found in extant books.	Date at which the name the addition of "the heirs of" is first found in extant books.	NOTES.
69.	The Heirs of Thomas Fawcett (in the older books <i>Fassett</i>)	1680	1744	
70.	" John Thornborough, Gent.	1682	1718	Mayor 1690, 1704, 1713.
71.	" Thomas Bernard	1682	1733	
72.	" William Plowman	1686	1748	
73.	" John Bedford (should be <i>Redford</i> ; mis- copied since 1862)	1755	1782	
74.	" John Winter	1694	1733	
75.	" William Cropp	1686	1716	
76.	" William Widdall (should be <i>David</i> Widdall; mis copied since 1787)	1694	1707	
77.	" Robert Lane (should be <i>Zaynes</i> ; mis- copied since 1769)	1694	1713	
78.	" John Brackstone	1694	1733	
79.	" William Heard (should be <i>Abraham Head</i>)	1680	1707	

THE FREESUITORS' LIST, 1907.
(continued)

		Date at which the name itself is first found in extant books.	Date at which the addition "the heirs of" is first found in extant books.	NOTES.
80.	The Heirs of Henry Pitt	—	1694	
81.	" William Brackstone	1694	1726	
82.	" Joseph Matcham, Gent.	1708	1753	
83.	" Andrew Webb	1711	1718	Sheriff 1703, Mayor 1710.
84.	" William Reade	1731	1733	Mayor 1729.
85.	" Nathaniel Knight	1713	1730	
86.	" John Broughton, Gent.	1731	1735	
87.	" Robert Sadlier, Gent.	1750	1779	Sheriff 1728, Mayor 1739 and 1748.
88.	" Arthur Hammond, Esq.	—	1808	Sheriff 1765.
89.	" Frederick Breton, Esq.	—	1808	
90.	" Richard Vernon Sadlier, Gent.	1750	1810	Mayor 1760 and 1771.
91.	" Charles Maret, Esq.	1824	1893	See above, p. 185 and p. 234.

APPENDIX VIII.

BIBLIOGRAPHY.¹

Adames, Jonas

The Order of Keeping a Court Leete and Court Baron, etc., 1593.

Anonymous

Court Keepers' Guides (see list in Part I., Section L, of this Essay).

Bacon, Francis (Lord St. Albans)

Answers to Questions proposed by Sir Alexander Hay touching the office of Constable in 1608. Bacon's Works, Edition of 1857-74, Vol. VII., pp. 748-54.

Baigent, F. J.

A Collection of Records, etc., relating to Crondal. Hants Record Society, 1891.

——— and Millard

History of Basingstoke, 1889.

Baildon, W. P.

Wakefield Court Rolls, 1274-1309. Yorkshire Arch. Soc. Trans.

Ballard, Adolphus

Seven Somerton Court Rolls. Oxford Arch. Soc. Trans.

———
History of Chipping Norton, 1893.

———
Chronicles of Woodstock, 1896.

Barmby, James

Memorials of St. Giles, Durham, 1896.

Bateson, Mary

Court Lect Roll of Peterborough, 1461. Eng. Hist. Review, Vol. XIX., pp. 526-28.

¹ For classified lists of authorities on the leet in theory and the leet in practice respectively, see Part I., Sect. I., and Part II., Sect. I. of the Essay. The dates given in this bibliography are those of the first editions.

- Batèson, Mary
Records of Leicester, 3 Vols., 1899-1905.
- Beamont, W.
Account of the Rolls of the Honour of Halton, 1879.
- Bedford, W. K. R.
History of Sutton Coldfield, 1890.
-
- The Manor of Sutton Coldfield*, 1901.
- Blackstone, Sir William
Commentaries on the Laws of England, 1765-69.
- Britton, John (Bishop of Hereford)
Leges Angliae. Edited by F. M. Nichols, 2 Vols., 1865.
- Brooke, Sir Robert
La Graunde Abridgement, 1568.
- Bunce, J. T.
History of the Corporation of Birmingham. 3 Vols., 1878-1902.
- Calthrope, Charles
The Relation between the Lord of a Manor and the Copyholder his Tenant, 1635.
- Carter, A. T.
History of English Legal Institutions, 1899. (Edition used : the third, 1906).
- C[arter], S.
Lex Custumaria, 1701.
- Cawood, John
The Articles of Lete and Courte for the Lyberties of Southwarke, 1561.
- Challenor, Bromley
Municipal Chronicles of the Borough of Abingdon, 1898.
- Chandler, H. W.
Five Court Rolls of Great Cressingham, 1885.
- Coke, Sir Edward
The Compleat Copyholder, 1630.
- The Institutes of the Laws of England*, 1628-44 (Edition of 1797 referred to in this Essay).

Comyns, Sir John

Digest of the Laws of England, 1762-67.

Cowell, John

The Interpreter of Words and Terms, etc., 1607.

Cross, John

Charge to the Jury of the Court Leet for the Manor of Manchester, Oct. 14, 1799. Manchester Court Leet Records, Vol. IX., App. II.

Cruise, William

Digest of the Laws of England respecting Real Property, 1804-6.

Cudworth, W.

The Bradford Court Leet. Bradford Antiquary, Vol. II., pp. 189-191.

Currey, H. E.

Court Rolls of Little Chester. Derbyshire Arch. Soc. Journal, Vol. XV., pp. 99-104.

Davies, J. S.

History of Southampton, 1883.

Digby, Sir K. E.

History of the Law of Real Property, 1866.

Dugdale, Sir William

Antiquities of Warwickshire, 1656.

Earwaker, J. P.

Manchester Court Leet Records, 1884-90.

Elton and Mackay

Law of Copyholds, 1874.

Erredge, J. A.

History of Brighthelmston, 1862.

Farrer, W.

Court Rolls of the Honour of Clitheroe, 1897.

Court Rolls of the Lordships, etc., of Thomas, Earl of Lancaster, 1901.

Fellowes, Henry

Laws respecting Copyholds and Court Keeping, 1794.

Fisher, R. B.

A Practical Treatise on Copyhold Tenure with the Methods of Holding Courts Leet, etc., 1794.

Fitzherbert, Sir Anthony

La Graunde Abridgement, 1514.

Natura Brevium, etc., c. 1534.

Fleta

Commentarius Juris Anglicani. Edited by John Selden, 1647.

Gneist, Rudolph

Das heutige englische Verfassungs- und Verwaltungsrecht, 1857-63.

Das englische Verwaltungsrecht, 1883-4.

History of the English Constitution. (P. A. Ashworth's translation) 1891.

Gomme, G. L.

Primitive Folkmoets, 1880.

Greenwood, William

The Authority, etc., of Courts Leet, etc., 1668.

Gurdon, Thornagh

History of . . . the Court Baron and Court Leet, 1731.

Hale, Sir Matthew

Pleas of the Crown, 1716.

[Hale, Sir Matthew ?]

The Power and Practice of the Court Leet of the City and Liberty of Westminster, 1743.

Harland, John

Manchester Court Leet Records, 1864-5.

Harris, Mary Dormer

Life in an Old English Town, 1895-8.

The Coventry Leet Book, 1907.

Hearnshaw, F. J. C. and D. M.

Southampton Court Leet Records, 1550-1624, 1905-6.

Hegel, Karl

Städte und Gilden der germanischen Völker im Mittelalter, 1891.

Heginbotham, Henry

Stockport Ancient and Modern, 1877, etc.

Hewitson, Anthony

Preston Court Leet Records, 1653-1813, 1905.

Hodgson, J. C.

Customs of the Court Leet and Court Baron of Morpeth with the Court Rolls of 1632. Arch. Æliana.

Holdsworth, W. S.

History of English Law, 1903.

Hone, N. J.

The Manor and Manorial Records, 1906.

Horne, Andrew

The Mirror of Justices (Le Mireur à Justices). Edited by W. J. Whittaker, 1895.

Hudson, W.

Leet Jurisdiction in the City of Norwich, 1892.

The Records of the City of Norwich (Vol. I.), 1906.

Jacob, Giles

The Complete Court Keeper, 1713.

Jenkins, David

Pacis Consultum . . . describing the Court Leet, 1657.

Keilwey, Robert

Relationes quorundam Casuum, 1602.

Kemp, Thomas

History of Warwick and its People, 1905.

Kerry, Charles

The Court Rolls of Baslow. Derbyshire Arch. Soc. Trans., xxii.-xxiii.

The Court Rolls of Holmesfield. Derbyshire Arch. Soc. Trans., xx.

Kitchin, John

Le Court Leete et Court Baron, etc., c. 1579.

Jurisdictions, or the Lawful Authority of Courts Leet, Courts Baron, etc., 1605.

Lane, John

The Court Rolls of Pargeter. Devon Arch. Assoc., xvi.

Lawrence, P. H.

Court Rolls of the Manor of Wimbleton, 1866.

Leach, A. F.

Beverley Town Documents, 1900.

Leader, J. D.

Records of the Burgery of Sheffield, 1897.

Lee, Thomas

The Duty of the Respective Officers appointed by the Court Leet in the Manor of Birmingham, 1789.

Lee and Pakeman

The Order of Keeping a Court Leet and a Court Baron, 1650.

Longstaffe and Booth

Halmota Prioratus Dunelmensis, 1889.

McKechie, W. S.

Magna Carta, 1905.

Maddock, H. E.

Court Rolls of the Patrington Manors. E. R. Antiq. Soc., VIII.

Maitland, F. W.

Domesday Book and Beyond, 1897.

Justice and Police, 1885.

Select Pleas in Manorial Courts, 1888.

Township and Borough, 1898.

— and Baildon, W. P.

The Court Baron, 1891.

Mandley, J. G. de T.

The Portmote or Court Leet Records of the Borough or Town and Royal Manor of Salford, 1902.

Massingberd, W. O.

Court Rolls of Ingoldsmells, 1902.

Medley, D. J.

English Constitutional History, 1894.

Merewether, H. A.

Report of the Case of the Borough of West Looe, 1823.

————— and Stephens

History of Boroughs, 3 Vols., 1835.

Money, Walter

History of Newbury, 1887.

Mordaunt, John

The Complete Steward, 1761.

Muir, Ramsay

History of Liverpool, 1907.

————— and Platt, E. M.

History of Municipal Government in Liverpool, 1906.

Municipal Corporations Report, Parts I.-V., 1835. Index, 1839.

Nelson, William

An Abridgment of the Common Law, 1726.

Lex Maneriorum, 1726.

Notes and Queries: Second Series, IV. (160) and VII. (157), and Sixth Series, VII. (229) and VIII. (16 and 217).

Parker, John

The Manor of Aylesbury. Archæologia, I.

Peacock, Edward

Notes from the Court Rolls of the Manor of Scotter. Archæologia, XLVI.

Court Rolls of the Manor of Hibbaldstow. Arch. Journal XLIV.

Phear, Sir J. B.

Court Rolls of Halham Manor. Devon Assoc., XXII.

Pike, L. O.

History of Crime in England, 2 Vols., 1873-76.

Placita Quo Warranto. Records Commissioners, 1818.

Pollock and Maitland

History of English Law, 2 Vols., 1895. (The second edition, 1898, is quoted throughout this Essay).

Powell, R.

The Jurisdiction of the Ancient Courts of Leet, 1642.

Reeves, John

History of English Law, 3 Vols., 1869.

Renton, A. W.

Encyclopædia of the Laws of England, 1897-1906.

Reporters: See under cases cited in Appendix III.

Ridges, E. W.

Constitutional Law of England, 1905.

Riley, H. T.

Munimenta Gildhallæ (Vol. I.: *Liber Albus*), 1859.

Ritson, Joseph

Jurisdiction of the Courts Leet, 1791.

Proceedings of the Court Leet of the Manor and Liberty of the Savoy, 1789.

Roberts, William

Charge to the Jury of the Court Leet for the Manor of Manchester, 1788. Manchester Court Leet Records, Vol. IX.

Rolle, Henry

Un Abridgment des Plusieurs Cases et Resolutions del Common Ley, 2 Vols., 1668.

Rotuli Hundredorum. Records Commissioners, 1812-18.

Rotuli Parliamentorum. By Order of House of Lords, 6 Vols., c. 1783. Index, 1832.

Round, J. H.

Feudal England, 1895.

Rouse, Rolla

Copyhold and Court Keeping Practice, 1837.

Scriven, John

Treatise on the Law of Copyholds, 1816.

Scroggs, Sir William

The Practice of Courts Leet and Courts Baron, 1702.

Sheppard, William

Court Keepers' Guide, 1641.

Survey of the County Judicatures, 1656.

Sinclair, David

History of Wigan, 2 Vols., 1882, etc.

Statutes of the Realm: Ruffhead's Edition, 9 Vols., 1763; and
Records Commissioners' Edition, 11 Vols, 1810-28.

Stephen, Sir James F.

History of Criminal Law of England, 3 Vols., 1883.

Stewart-Brown, R.

The Wapentake of Wirral, 1907.

Stow, John

Survey of the Cities of London, etc., 1598.

Stubbs, W.

Constitutional History of England, 3 Vols, 1873, etc.

Lectures on Early English History, 1906.

Select Charters, 1870.

Tait, James

Mediæval Manchester and the Beginnings of Lancashire,
1904.

Travis-Cook, John

Notes relative to the Manor of Myton, 1890.

Viner, Charles

A General Abridgment of Law and Equity, 1742-51.

Vinogradoff, Paul G.

The Growth of the Manor, 1905.

Villainage in England, 1892.

Watkins, Charles

A Treatise on Copyholds, 1797.

Watts, A.

Court Rolls of Little Crosby. Lanc. and Ches. Hist. Soc. (New Series), VII.-VIII.

Webb, Sidney and Beatrice

English Local Government : the Manor and the Borough, 1908.

Whittle, P. A.

History of Preston, 2 Vols., 1821-37.

Wilkinson, John

The Manner and Form how to keep a Court Leet, 1620.

Year Books (see p. 27 and p. 152 of the Essay).

Yeatman, P.

Records of Chesterfield, 1884.



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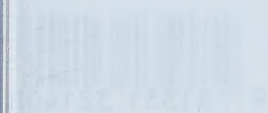
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